

January 25, 2016

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

SHERRY L. DUFFIE,

Plaintiff,

-v-

Case No. 14-14148

THE MICHIGAN GROUP, INC. -
LIVINGSTON d/b/a RE/MAX
PLATINUM, a Michigan corporation,

Defendant.

JURY TRIAL

BEFORE THE HONORABLE JUDITH E. LEVY
UNITED STATES DISTRICT JUDGE

JANUARY 25, 2016

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P R O C E E D I N G S

THE COURT: This is the case of Sherry L. Duffie vs The Michigan Group, Inc., doing business as RE/MAX Platinum, case 14-14148. Could I please have appearances for the record?

MR. FARRAR: Good morning, your Honor. Brian Farrar for the plaintiff.

MS. GUSFA: Good morning, your Honor. Elisabeth Gusfa for the plaintiff.

MR. PILCHAK: Your Honor, William E. Pilchak for the defendant.

MR. DARE: And Robert Dare for the defendant.

MR. RUSSELL: And William Russell for the defendant.

THE COURT: Okay. Well, welcome back to everyone. What do you have, Mr. Farrar?

MR. FARRAR: Your Honor, I guess just briefly I wanted to raise with the Court's -- bring to the Court's attention a discussion I just had a few moments ago with Mr. Pilchak. And this is regarding the interstate commerce issue that came up in the jury instructions.

THE COURT: Oh. Yeah.

MR. FARRAR: I don't want to speak for Mr. Pilchak. But it seems like from based on our discussion that defendant will no longer be pursuing that or, I guess, making an issue of that.

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1 THE COURT: Well, he wasn't making an issue except in
2 the jury instructions.

3 MR. PILCHAK: Right.

4 THE COURT: Because it's in the list of stipulations,
5 right?

6 MR. PILCHAK: Well, that's the issue that we're --
7 there is a fairly complicated issue. An employer is, under
8 the definition of the Fair Labor Standard Act, is merely
9 somebody who stands in relation of an employer to an employee.
10 The interstate commerce element is a whole different thing.
11 It's a whole different aspect of the case.

12 I'm just -- I had a discussion with Mr. Farrar. The
13 defense does not want to make that a central issue either for
14 -- or an issue for either jury instructions or directed
15 verdict purposes. Frankly, we feel that there's already
16 enough on the record with regard to interstate commerce for
17 directed purpose -- directed verdict purposes. And we don't
18 really think there's a need to distract the jury from the
19 essential issues of the case.

20 THE COURT: Okay.

21 MR. PILCHAK: So I won't be requesting on the jury
22 instructions and to the extent they mention interstate
23 commerce.

24 THE COURT: Okay. So we'll take all of that out,
25 which we were going to do anyway.

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1 MR. PILCHAK: Okay.

2 THE COURT: But it helps that you agree.

3 MR. FARRAR: And therefore, in light of that, then we
4 will no longer need to solicit any testimony regarding that
5 because it sounds like it's clear now that that will not be an
6 issue in this case.

7 THE COURT: Well, let's be perfectly clear about
8 whether it's an issue. See, I had understood when I read the
9 stipulation that you are an employer as defined by section 203
10 D, that that was what this stipulation was about. I now
11 understand that apparently that was not what the stipulation
12 was meant to encompass.

13 So let me be perfectly clear. It is stipulated
14 between the parties that the defendant is an employer as
15 defined by the Fair Labor Standard Act that engages in
16 interstate commerce and, therefore, potentially has liability
17 of this particular case.

18 MR. PILCHAK: Yes, your Honor, we can stipulate to
19 that.

20 THE COURT: Okay.

21 MR. FARRAR: Thank you. Nothing further.

22 THE COURT: All right. Well, then we will get
23 started. And is Ms. Duffie going to be back on the stand?

24 MR. PILCHAK: Yes.

25 THE COURT: Okay. I think what I'll do is have the

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1 jury come in, then have you take the stand and remind you in
2 front of them that you're under oath just so that they
3 understand that. In light of the fact that it's close to
4 9:30, I'm imagining that we'll take a convenience break at
5 just about 11:00. And then we'll go until 1:00 for the matter
6 that I have at 1:00.

7 THE CASE MANAGER: All rise for the jury.

8 (Jury In)

9 THE COURT: Please be seated. Welcome back to our
10 jury. It's great to see you on a Monday morning. And we are
11 very fortunate people not to have had three feet of snow over
12 the weekend, so, as much of the country did. So welcome back.
13 And what we're going to do is resume right where we left off
14 on Friday, which will be Ms. Duffie on the stand.

15 And for the jury, I think I mentioned this earlier
16 with a different witness. But once someone is sworn in to
17 tell the truth in a case, they continue to be under that oath
18 to tell the truth. So Ms. Duffie is still sworn in this case.
19 And we were -- Mr. Pilchak was finishing up or continuing with
20 his questioning. So please proceed.

21 Thereupon,

22 **S H E R R Y D U F F I E ,**

23 having previously been called as a witness and having been
24 first duly sworn testified as follows:

25 CROSS-EXAMINATION (CONTINUED)

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1 BY MR. PILCHAK:

2 Q. Ms. Duffie, you will find in front of you, like you had on
3 Friday, the exhibits, Defense Exhibits, and your deposition
4 transcript, should you need to refer to it.

5 We've been talking about a number of individuals.

6 Linn Felker. Linn Felker was in Central even before the
7 merger, correct?

8 A. Correct.

9 Q. I'm sorry?

10 A. Correct. I'm sorry.

11 Q. And then Erica Hahn went into Central at the time of the
12 merger, correct?

13 A. Correct.

14 Q. And that she was there for a period of time, correct?

15 A. Correct.

16 Q. And then she left?

17 A. Yes.

18 Q. And a person by the name of Samantha Rencsak worked in
19 Central?

20 A. Yes.

21 Q. And then Samantha Rencsak left. And approximately a few
22 weeks later Valery Kruczynski was hired, correct?

23 A. I believe so.

24 Q. Okay. So essentially except for that gap of perhaps a
25 couple or few weeks between Rencsak and Kruczynski, besides you

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1 between March of 2011 and March of 2014, there were at least
2 always two other people working in Central?

3 A. And others, too.

4 Q. Okay. Would you turn to proposed Exhibit 27?

5 THE COURT: Of defendant's?

6 BY MR. PILCHAK:

7 Q. Defendant's proposed 27. Do you identify this as an
8 e-mail from you to Erica Hahn and Linn Felker?

9 A. Yes.

10 Q. And is the general subject regarding work to be done?

11 A. Yes.

12 MR. PILCHAK: Move to admit, your Honor.

13 THE COURT: Is there any objection?

14 MR. FARRAR: No, Your Honor.

15 THE COURT: Okay. Then Defense Exhibit 27 is
16 received.

17 (Defense Exhibit No. D-27 Admitted
18 Into Evidence)

19 MR. PILCHAK: And may I display it, your Honor?

20 THE COURT: Yes.

21 BY MR. PILCHAK:

22 Q. Ms. Duffie, the first line of this -- the first paragraph
23 of this is directed to Erica Hahn, correct?

24 A. Yes.

25 Q. And your statement to her was, please work with Linn so

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1 she can begin getting the mail for Central and show her how to
2 input RE/MAX payables in RMS? That was your first sentence to
3 her?

4 A. Yes.

5 Q. And would you agree with me that this was part of a
6 cross-training effort that you had implemented?

7 A. Well, I didn't implement the cross-training effort. But
8 this had been a discussion between Erica, Linn, and myself on
9 how we were going to try and cover some of Erica's time off.

10 Q. Well, is it or is it not part of a cross-training effort?

11 A. It is part of a cross-training effort.

12 Q. Okay. And so the cross-training effort is so that Linn
13 can start getting the mail for Central, correct?

14 A. It was so that Linn could recognize the mail for what it
15 was.

16 Q. Right. In other words, getting the mail in and sorting
17 through it requires some recognition of what the mail relates
18 to, correct?

19 A. The company. Correct.

20 Q. And who it should go to?

21 A. Yeah.

22 Q. Okay. And then the second part of that first phrase is to
23 show her how to input RE/MAX payables into RMS. And the
24 reference to RMS is the Lone Wolf Realty Management System,
25 correct?

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1 A. Yes.

2 Q. And so you wanted Erica to show Linn how to input RE/MAX
3 payables into the Lone Wolf system?

4 A. Yes. She had already been teaching her how to write them
5 up and she needed to show her how to input them.

6 Q. Okay. And then the next statement is I have a stack on my
7 desk that I will give to both of you tomorrow. In other words,
8 you had a stack of payables on your desk and you're giving
9 them, through that statement, to Erica so that they can input
10 them together as part of this cross-training effort, correct?

11 A. Yes.

12 Q. And I've already talked to Linn about the bills, credit
13 card mortgage payments, etcetera, that I need to see
14 immediately before they're posted, correct?

15 A. Yes.

16 Q. So you had given some direction to Linn Felker in this
17 respect, correct?

18 A. I had shown her what I needed to see.

19 Q. And you would agree with me that Linn Felker looked to you
20 for guidance in terms of the processes?

21 A. If she -- yeah, she looked to me for help on them.
22 Absolutely.

23 Q. For guidance. I'm specifically saying guidance.

24 A. I guess you can possibly say guidance. I mean, it was
25 help. We were helping each other.

1 Q. Well, in fact, you instructed and trained Linn Felker with
2 respect to processes?

3 A. Actually, Erica trained Linn Felker on most of them. I
4 think I showed Linn closings. I'm not positive.

5 Q. You trained her on processes then?

6 A. How to input data, absolutely.

7 Q. And she had been working in Central longer than you?

8 A. Yes.

9 Q. And you understood that Felker looked to you as her
10 supervisor at least with respect to procedures?

11 A. Probably because I was most experienced with it, yes.

12 Q. And you were more -- most experienced with these
13 procedures even though you had worked -- or she had worked in
14 Central longer than you?

15 A. Well, certainly on the closings that I was showing her how
16 to do. She had never been doing those. She had been doing
17 many other things in Central.

18 Q. Would you turn to proposed exhibit -- defendant's proposed
19 Exhibit 72? Do you identify proposed Exhibit 72 as an e-mail
20 from you under the -- over the signature block administrative
21 manager?

22 A. Yes.

23 Q. And it's an e-mail to an Aileen Heck, correct?

24 A. Yes.

25 Q. And it references training or references a class?

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1 A. Right. A roundtable discussion we were having.

2 MR. PILCHAK: Move to admit proposed Exhibit 72.

3 MR. FARRAR: No objection.

4 THE COURT: Okay. It will be received.

5 (Defense Exhibit No. D-72 Admitted
6 Into Evidence)

7 MR. PILCHAK: And may I display, your Honor?

8 THE COURT: Yes.

9 BY MR. PILCHAK:

10 Q. Aileen Heck apparently had intended to stop into the
11 office and see you; is that correct?

12 A. Yeah. I think she was bringing in paperwork. I'm not
13 positive. But yes, I believe she was dropping some stuff off
14 to me.

15 Q. Well, what I'm interested in is the statement that you
16 included, "I am having a class for my administrators tomorrow
17 from 10:00 AM until approximately noon." Do you see that?

18 A. I see that.

19 Q. Okay. So you were having a class for, quote, your
20 administrators, end quote. Correct?

21 A. That's what I wrote. We were having a roundtable on
22 problems and issues that they were having in other offices.

23 Q. And you at least partially delivered that class, correct?

24 A. There wasn't instruction. It was -- we had manuals and we
25 were going through the manuals to make sure nobody had

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1 questions. We had some difficulty transactions and it was to
2 clear up any confusion.

3 Q. Well, did you deliver training at that session or not?

4 A. No, it wasn't training. No.

5 Q. Okay. Would you turn to page 177 of the transcript?

6 MR. FARRAR: What line are we referring to?

7 BY MR. PILCHAK:

8 Q. In fact, just -- you can reference page 166 starting at
9 line 22 to yourself. Reference that to yourself.

10 A. Okay.

11 Q. Having reviewed the bottom of page 176 --

12 A. Oh, I thought you said 66.

13 MR. FARRAR: You did say 166.

14 BY MR. PILCHAK:

15 Q. Oh, I'm sorry. 176 to page 177.

16 A. Oh.

17 Q. I'm sorry if I misspoke. Having reviewed the bottom of
18 page 176, are you confident that this portion of your testimony
19 was discussing this e-mail referencing the class for
20 administrators?

21 A. Yes.

22 Q. All right. And then going to page 177 at line 13, did I
23 ask you this question and did you deliver this answer at least
24 in the first sentence of your answer.

25 "QUESTION: And did you deliver the

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1 "training?
2 "ANSWER: Partially so. But like I
3 "said, it was more of a round
4 "training -- more of a roundtable
5 "discussion on different things."

6 A. Yes.

7 Q. Okay. So I mean, you delivered some training in that
8 session, correct?

9 A. I guess you could characterize it as training even though
10 we were all, you know, discussing things.

11 Q. Okay. And would you turn to proposed exhibit Defense
12 Exhibit 74. Do you identify proposed Exhibit D-74 as an e-mail
13 chain between you and Staci Wodolan?

14 A. Yes.

15 Q. And is there a reference to training in this e-mail?

16 A. Yes. Staci was looking for a --

17 Q. The answer is yes?

18 A. -- referral check. And Linn was training Valery so she
19 had not done it yet.

20 MR. PILCHAK: Move to admit proposed Exhibit D-74.

21 MR. FARRAR: No objection.

22 THE COURT: Okay. D-74 is received.

23 (Defense Exhibit No. D-74 Admitted
24 Into Evidence)

25 BY MR. PILCHAK:

1 Q. Ms. Duffie, in your November 20th, 2012 e-mail you stated,
2 "Hi, Staci. Sorry for the delay. We are training new staff
3 and we are turning these around a little slow right now."

4 Those were your words in 2012?

5 A. Yes.

6 Q. And the new staff that you were training, would that have
7 been Samantha Rencsak who arrived in the department after Erica
8 Hahn's approximate August of 2012 departure?

9 A. That's possible.

10 Q. Okay. Do you remember what type of training that you were
11 delivering to Ms. Rencsak that would take you away for such a
12 period of time that you were turning checks around a little bit
13 slowly?

14 MR. FARRAR: Objection.

15 THE COURT: The basis of your objection?

16 MR. FARRAR: The form of the question. Also I
17 believe it's a mischaracterization of her testimony.

18 MR. PILCHAK: Well, I'll withdraw.

19 THE COURT: Okay.

20 BY MR. PILCHAK:

21 Q. You're telling Ms. Wodolan that you don't have your check
22 because you've been spending your time training your staff,
23 correct?

24 A. No, that is not correct.

25 Q. Okay. What it is -- what is it that you're turning around

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1 a little slow?

2 A. Well, this was when Linn was processing closings. And she
3 would have not had time to cut this check if she was training
4 Sam.

5 Q. All right. And why do you then say we are training staff
6 as opposed to Linn is training staff?

7 A. We was Linn, Sam, me, and whoever was back there.

8 Q. So you admitted just a few minutes ago that you trained
9 Linn?

10 A. Specifically on closings.

11 Q. And but you didn't train Samantha?

12 A. No. Not anything that I can recall.

13 Q. Would you turn to proposed Exhibit D-73? Do you identify
14 proposed Exhibit D-73 as a e-mail from you to a person by the
15 name of Kristen Knotek?

16 A. Knotek.

17 Q. Knotek.

18 A. Yes.

19 Q. And at the bottom of the first page of the exhibit, it
20 references training, correct?

21 A. The bottom of -- yes. Training.

22 MR. PILCHAK: And I would move to admit proposed
23 Exhibit D-73.

24 THE COURT: Is there any objection?

25 MR. FARRAR: No objection, your Honor.

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1 THE COURT: Okay.

2 MR. PILCHAK: And may I display, your Honor?

3 THE COURT: Yes.

4 BY MR. PILCHAK:

5 Q. Ms. Duffie, this is an e-mail from you to Kristen Knotek
6 regarding Lone Wolf training, correct?

7 A. Correct.

8 Q. And you are asking her is the training geared more -- let
9 me withdraw that. You are investigating training materials
10 here, correct?

11 A. I'm just asking the question of who the training was for.

12 Q. Well --

13 A. It was two different types of training.

14 Q. You had looked at -- you had somehow learned of some
15 training materials that were offered, correct?

16 A. She had sent me an e-mail, yes.

17 Q. Okay. And you were responding as -- to learn more
18 information about these training materials, correct?

19 A. Basically just who it was for, whether it was for my
20 agents or my staff.

21 Q. Right, right. Okay. So you were looking to see if --
22 where this training material -- who would benefit from this
23 training material?

24 A. Right. Because if this was agent training, we normally
25 would broadcast it out on our intranet for the agents so that

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1 they could sign up if they wanted to do so. Usually we set it
2 up so they could sign up through the program.

3 Q. Well, this then says the program is mostly intended for
4 brokers, managers and office administrators and office staff
5 who would make the entries and run the reports in the system,
6 correct?

7 A. Yes.

8 Q. And the office administrators, managers, and office staff
9 would make the entries and run the reports from the system,
10 those would be the people in Central, correct?

11 A. Yes. And in our satellite offices.

12 Q. And you said, we are all pretty trained on it, correct?

13 A. Yes.

14 Q. I just want to reference an exhibit that you've talked
15 about several times previously. Exhibit 35, I just want to
16 reference this. Your involvement in unemployment claims. The
17 exhibit states, "I've disputed the every unemployment claim in
18 2012 --

19 MR. FARRAR: I'm sorry. Which exhibit are we
20 referring to?

21 MR. PILCHAK: 35.

22 MR. FARRAR: That's not 35 I have.

23 THE COURT: Just a minute.

24 MR. FARRAR: It's the earlier -- I'll withdraw that.

25 THE COURT: Oh, yeah. It's page 2 of Exhibit 35.

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1 BY MR. PILCHAK:

2 Q. So your reference, "I have disputed every unemployment
3 claim" is what I want to reference here. There is a process
4 for disputing unemployment claims, correct?

5 A. It's a form, yes.

6 Q. In fact, if you turn to Exhibit 21 already admitted -- let
7 me rephrase that. Turn to proposed Exhibit 22. You see a
8 one-page form?

9 A. Yeah. This is only one page of it though.

10 Q. Can you identify in the upper right-hand corner that this
11 is what's known as a factfinding form?

12 A. Yes.

13 Q. And did you sign this form as administrative manager?

14 A. Yes.

15 MR. PILCHAK: Move to admit as proposed Exhibit 22.

16 THE COURT: Is there any objection?

17 MR. FARRAR: No objection.

18 THE COURT: Then 22 is received.

19 (Defense Exhibit No. D-22 Admitted
20 Into Evidence)

21 MR. PILCHAK: And may I display, your Honor.

22 THE COURT: You may publish it to the jury.

23 BY MR. PILCHAK:

24 Q. And this is a factfinding form with regard to Barbara
25 Webster, correct?

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1 A. It appears to be so. It's not all here though.

2 Q. That's right. It's just the first page.

3 A. Okay.

4 Q. And you signed it as administrative manager, correct?

5 A. Yes.

6 Q. And in terms of factfinding, the factfinding process at
7 the unemployment agency is that the employer sends in their
8 version of the facts and the employee sends in their version of
9 the facts, and the unemployment agency makes a determination
10 whether a person should get benefits or not, correct?

11 A. I do not remember exactly what is on the form.

12 Q. I didn't ask what's on the form.

13 A. I'm not sure what I had to fill out. Usually it was
14 hours. It was hours. And if they were laid off or fired.

15 Q. Okay. And we're engaged in -- strike that. Factfinding
16 does not suggest to you that there's a determination being made
17 on the facts?

18 A. Well, I'm sure it does --

19 THE COURT: Excuse me, sir, who just came in. Are
20 you here for our 10 o'clock scheduling conference?

21 (Pause In Proceedings)

22 THE COURT: Thank you, Mr. Pilchak.

23 THE WITNESS: I'm sorry. Could you ask me the
24 question again? I got distracted.

25 BY MR. PILCHAK:

1 Q. Well, the factfinding, doesn't that suggest to you that
2 somebody's making a finding of fact?

3 A. Yes.

4 Q. Okay. And let me now reference you to -- well, let me
5 rephrase that. It has been your experience that people are
6 denied unemployment on the basis of what the employer -- what
7 information the employer submits to them, correct?

8 A. Well, I would imagine if they had less than the amount of
9 credit weeks, sure.

10 Q. Or if they had been dismissed for misconduct, correct?

11 A. I'm not sure if I saw one ever have that happen.

12 Q. Well, you -- okay.

13 A. I'm not sure.

14 Q. I want to reference you to Exhibits 21, which are already
15 admitted. In the first line of Exhibit 21 it references
16 requesting a redetermination of benefits, correct?

17 A. Yes.

18 Q. So it is your experience that from time to time that the
19 unemployment agency would make a determination of benefits in
20 front of -- in favor of the employee, correct?

21 A. That they would -- yes.

22 Q. And then you would submit -- you would submit further
23 information just like Defense Exhibit 21 requesting a
24 redetermination, correct?

25 A. Yes. But this one was obviously done in mistake, in

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1 error.

2 Q. And in Exhibit 35 when you're saying that the rate has
3 gone down, you mean the experience rating that the company has
4 with the unemployment agency, correct?

5 A. Right. The percent that we paid in taxes.

6 Q. And the reason that the rate went down is because you sent
7 in factfinding forms and requests for redetermination so that
8 the -- so that The Michigan Group did not have the experience
9 rating that it had previously?

10 A. Right. I filled out their forms. And if they made an
11 error, I corrected it so that this would have increased the
12 amount we had to pay due to their mistake.

13 Q. Sometimes these -- you reported misconduct, correct?

14 A. I am not positive, but I believe one time there was.

15 Q. Right. And that was Barbara Webster, correct?

16 A. I think that's possible, yes.

17 Q. In an instance like Barbara Webster, in order to dispute
18 the claim, it was part of your job to go to the managers who
19 had witnessed the misconduct or who could provide information
20 about the misconduct, correct?

21 A. Yes.

22 Q. And this is not a duty that was ever delegated to anybody
23 other than you, such as Ms. Felker, Ms. Hahn or anybody like
24 that?

25 MR. FARRAR: Objection.

1 MR. PILCHAK: Strike that.

2 BY MR. PILCHAK:

3 Q. At least from March of 2011 through March of 2014, you
4 were the only person in Central who went around to any managers
5 to talk about any misconduct issues, correct?

6 A. I believe so.

7 Q. And you would agree that it would be inappropriate to make
8 a lower level employee, like Ms. Hahn or Ms. Felker, privy to
9 misconduct issues involving other employees?

10 A. They were normally aware of this information. I don't
11 believe they were ever excluded from any of this information.
12 Anything that -- I mean, anything that came into Central we
13 were all aware of.

14 Q. Central also processed garnishments, correct?

15 A. Yes.

16 Q. And you were the person who was responsible for assuring
17 that the company followed the required processes for
18 garnishments, correct?

19 A. Well, actually Erica, Linn and I all did garnishments,
20 yes.

21 Q. Well, but you were the person who was responsible for
22 knowing the procedures, correct?

23 A. Well, they had to know the procedures also.

24 Q. Well, were you responsible for knowing the procedures?

25 A. Yes, I was responsible for knowing it.

1 Q. One of the things that Central did was initiate eviction
2 proceedings when that became necessary for tenants that lived
3 in duplexes owned by one of the subdivisions, correct?

4 A. Yes. For D & D Real Estate.

5 Q. And would you turn to proposed Exhibit 24?

6 A. Okay.

7 Q. Do you identify proposed Exhibit Number 24 as a series of
8 forms with a notation in the upper left-hand corner approved
9 SCAO, which I will represent means state court administrators
10 office, related to the eviction process?

11 A. Yes.

12 Q. And do each of the forms bear your signature in the middle
13 left portion of the documents?

14 A. Yes.

15 MR. PILCHAK: Move to admit proposed Exhibit 24, your
16 Honor.

17 MR. FARRAR: No objection.

18 THE COURT: Okay. They will be received -- it will
19 be received.

20 (Defense Exhibit No. D-24 Admitted
21 Into Evidence)

22 MR. PILCHAK: May I display, your Honor?

23 THE COURT: Yes.

24 BY MR. PILCHAK:

25 Q. Ms. Duffie, you signed it here where it says signature of

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1 owner of the premises or agent, correct?

2 A. Yes. I signed this as I was instructed.

3 Q. Okay. And the designation that you provided is agent and
4 that's what's provided for by the form, correct?

5 A. Yes. As I said, this is how I was shown to do this.

6 Q. And with respect to these forms, these are the documents
7 that initiate the legal proceedings at the district court,
8 correct?

9 MR. FARRAR: Objection.

10 MR. PILCHAK: Let me rephrase the question.

11 BY MR. PILCHAK:

12 Q. You send these in to the district court, correct?

13 A. Yes.

14 Q. All right. And this initiates a legal process, correct?

15 A. I believe so.

16 Q. And initially at least you would be the person to whom
17 they would send the paperwork from the district court, correct?

18 A. I'm trying to think what the paperwork would have been. I
19 don't recall.

20 Q. Well, you are the only person that's listed from the
21 employer in this matter?

22 A. From D & D. I'm assuming I would have gone if it was
23 addressed to D & D, absolutely.

24 Q. And should it ever occur that there had to be a contested
25 hearing where proofs were taken in court, Mr. Russell might

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1 then at that point in time make an appearance in the case,
2 correct?

3 A. Yes. Bill would do any court appearances.

4 Q. We talked about the importance of opening the mail and
5 notice and determining who gets what. Would you turn to
6 proposed Exhibit 23. And specifically 23A.

7 A. Okay.

8 Q. Do you identify proposed Exhibit 23A as a communication
9 from the Internal Revenue Service?

10 A. Yes.

11 Q. And this came in the mail, correct?

12 A. Yes.

13 Q. And it came to your -- it eventually came to your
14 attention. I'm not going to say it was addressed to you. But
15 it came to your attention, correct?

16 A. Sure. It eventually ended up on my desk.

17 Q. Eventually as in Linn Felker had received it?

18 A. Any of us could have opened it.

19 Q. Okay. But it made it to your desk?

20 A. Yes.

21 Q. Okay. And the subject matter of --

22 MR. PILCHAK: Well, I move to admit proposed Exhibit
23 23A.

24 MR. FARRAR: Your Honor, can we have one moment?

25 THE COURT: Certainly.

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1 MR. FARRAR: No objection.

2 THE COURT: Okay. Then it will be received.

3 (Defense Exhibit No. D-23A Admitted
4 Into Evidence)

5 MR. PILCHAK: And may I display it then, your Honor?

6 THE COURT: Yes.

7 BY MR. PILCHAK:

8 Q. And for the record, this is a document from the Internal
9 Revenue Service indicating that an intent to impose a penalty
10 for late filing of W-2 -- W-3 forms -- a W-3 form with W-2
11 forms, correct?

12 A. Correct.

13 Q. And the forms had been mailed regular mail, correct?

14 A. Yes.

15 Q. And they were contending that they did not receive them in
16 a timely fashion?

17 A. Yes.

18 Q. And in fact, that they were weren't mailed in a timely
19 fashion?

20 A. It's the same thing, isn't it? I mean, yes.

21 Q. Okay. And so they were proposing a penalty of \$1,680,
22 correct?

23 A. Yes.

24 Q. And would you propose -- turn to proposed Exhibit 23B?

25 You have identified proposed Exhibit 23B as your letter to the

1 Internal Revenue Service?

2 A. Yes.

3 Q. In response to Exhibit 23A, correct?

4 A. Yes.

5 MR. PILCHAK: Move to admit proposed Exhibit 23B.

6 MR. FARRAR: No objection.

7 THE COURT: Let me just -- is 23B -- okay.

8 Certainly. It is received.

9 (Defense Exhibit No. D-23B Admitted

10 Into Evidence)

11 BY MR. PILCHAK:

12 Q. Ms. Duffie, this was your letter setting forth the
13 company's position as to why a penalty should not be proposed,
14 correct?

15 A. Yes. Because it was obviously an error.

16 Q. You wrote the letter, correct?

17 A. Yes.

18 Q. And nobody else contributed to the letter, correct?

19 A. Correct.

20 Q. And in fact, you signed the letter administrative manager,
21 correct?

22 A. Yes.

23 Q. And in fact, you would agree that Ms. Steudle did not know
24 about this penalty issue, correct?

25 MR. FARRAR: Objection.

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1 MR. PILCHAK: Let me rephrase it --

2 THE COURT: Let's ask for the foundation for that
3 first.

4 BY MR. PILCHAK:

5 Q. Ms. Duffie, you don't believe -- based on all of the facts
6 that you know, you have no reason to believe that Ms. Steudle
7 knew anything about this penalty or your response, correct?

8 A. I don't recall.

9 Q. And based on all of the facts that you know, you have no
10 reason to believe that Mr. DeKroub knew anybody about the
11 penalty or your response, correct?

12 A. I'm not sure.

13 Q. In any case, it was within your authority in your office
14 as Central to write this letter as administrative manager
15 taking the company's position with regard to the penalty issue.

16 MR. FARRAR: Objection.

17 THE COURT: The basis?

18 MR. FARRAR: To the form of the question.

19 MR. PILCHAK: Let me rephrase it.

20 THE COURT: Okay.

21 BY MR. PILCHAK:

22 Q. It was within your authority to respond to the Internal
23 Revenue Service on this penalty issue?

24 A. Because I was the one that took these to the post office.
25 I mail them personally.

1 Q. Right. And it was within your responsibility to respond
2 to this issue?

3 A. Yes.

4 Q. And it was your -- you decided what information would be
5 gathered, how you would respond to this issue, correct?

6 A. I just basically told them what happened. They were all
7 -- I mean, I didn't do anything other than say I mailed them
8 all. Why are you saying this piece was missing when all of
9 this was there?

10 Q. I understand what you have in the letter. You said that
11 you mailed them, correct?

12 A. Yes.

13 Q. And you said that the receipt appears to be faded and
14 illegible, correct?

15 A. That's correct.

16 Q. So in other words, you made the decision on what
17 information should be put in here, what efforts should be done
18 in order to locate it, etcetera, correct?

19 A. I suppose.

20 Q. You made the decision that it wasn't worth going to the
21 post office to see if they had a record of the receipt that
22 would show all of the transactions?

23 A. I wasn't aware that I could do that.

24 Q. And whatever procedures were in place in Central didn't
25 require that something of this nature imposing IRS penalties

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1 had to be elevated to anybody above you within the company,
2 correct?

3 A. If there was a procedure or process you said?

4 Q. I'm just saying. Apparently there was nothing in place
5 that required anything of this level of concern or this level
6 of a problem to be forwarded to Jennie Steudle or Joseph
7 DeKroub?

8 MR. FARRAR: Objection.

9 MR. PILCHAK: Is that correct?

10 THE COURT: Well, overruled. If she knows the
11 answer, she can answer.

12 THE WITNESS: I truly do not remember who I would
13 have discussed this with.

14 THE COURT: I think the question, Ms. Duffie, is was
15 there a manual or were there directions as to how they handled
16 challenge from the IRS or a problem with the IRS?

17 THE WITNESS: I don't think so.

18 BY MR. PILCHAK:

19 Q. So somebody within -- somebody within Central makes the
20 decision as to whether this needs to be escalated outside of
21 Central, correct?

22 MR. FARRAR: Objection to form.

23 THE COURT: Well, if she knows the answer.

24 THE WITNESS: I'm sorry. Could you repeat that,
25 please?

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1 BY MR. PILCHAK:

2 Q. So the decision is made within Central as to whether
3 something of this nature needs to be escalated outside of
4 Central, correct?

5 A. Well, Joe was in Central. So it wouldn't be outside of
6 Central.

7 Q. But Joe never learned of this as far as you know, correct?

8 A. As I said, I don't recall who I discussed this with.

9 Q. Well, I'm just asking, you can tell me that as far as you
10 know Mr. Steudle did not know about it, correct?

11 A. Mr. DeKroub.

12 Q. I'm sorry. Mr. DeKroub did not know about it, correct?

13 A. I'm not sure.

14 Q. Well, would you turn to page 201 of your transcript?
15 Turning to line 2. Did I ask you in March of 2015, and in fact
16 did anybody know about this penalty on September 12th, 2003
17 other than you? You said possibly Kevin Stewart at UHY would
18 be the only one. Correct?

19 A. That's what I said.

20 MR. FARRAR: Your Honor, we'd ask the rest of that
21 answer be read.

22 THE COURT: Yeah. Let's -- sustained.

23 BY MR. PILCHAK:

24 Q. Well, was the full answer -- was the full question and the
25 full answer,

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1 "QUESTION: In fact, did
2 "anybody know about this
3 "penalty on September 12th,
4 "2013 other than you?
5 "ANSWER: Possibly Kevin
6 "Stewart at UHY would be the
7 "only one, but the reason I
8 "responded was because this
9 "made no sense. It had to be
10 "in error."

11 A. Yes.

12 Q. Now, there were no -- there was no person within The
13 Michigan Group that had a title that related to the human
14 resources function, correct?

15 A. There was no person? No, not --

16 Q. Right. There wasn't like an HR director or anything like
17 that?

18 A. No.

19 Q. And prior when you first joined The Michigan Group --
20 strike that. When you first joined The Michigan Group, the
21 personnel files were kept under -- in a locked cabinet in
22 Kandis Thompson's office, correct?

23 A. Yes. For all the entities.

24 Q. And then in March of 2011 when you came back to Central
25 from Ann Arbor, then you moved into Kandis Thompson's office,

1 correct?

2 A. Yes.

3 Q. And so the personnel files after you came back to Central
4 were kept in your office, correct?

5 A. Yes.

6 Q. And your office had a lock on the door, correct?

7 A. Yes.

8 Q. And in fact, the cabinet where the personnel files were
9 kept, that was a locked cabinet as well?

10 A. Yes.

11 Q. And you kept the key in a drawer in your office pushed way
12 back to the far, far back to the right-hand side behind your
13 pen drawer, correct?

14 MADAM COURT REPORTER: I'm sorry. You said behind
15 what?

16 MR. PILCHAK: Your pen drawer.

17 THE WITNESS: Yeah. They were usually in that top
18 drawer.

19 BY MR. PILCHAK:

20 Q. And you pushed it to the -- you kept it in the back behind
21 the pen drawer, correct?

22 A. At night when I would leave for the day, they would be
23 behind the pen -- it was the pen box, whatever.

24 Q. And the purpose of pushing it back there is that if
25 somebody actually were able to gain entrance to your office,

1 you were hoping that they wouldn't stumble upon the key to the
2 locked drawer?

3 A. Well, yeah. The cleaning people. They would come at
4 night, so.

5 Q. Precisely.

6 A. But everybody else in Central knew where the keys were and
7 had keys to my office.

8 Q. Right. But the idea was that's why you pushed the --
9 that's why you had the keys in the back part of the cabinet so
10 not every Tom, Dick, or Harry who could come into your office
11 would find the keys, correct?

12 A. Well, yeah. Technically it was for the cleaning people
13 because they would be the only ones that would be there when no
14 one else was.

15 Q. Well, Ken Durrant would come into your office, he was an
16 IT guy, right?

17 A. Sure.

18 Q. And one of the things that were kept in your office were
19 personnel policies, correct?

20 A. Yes.

21 Q. And in fact, if you would turn to Exhibit 13B, proposed
22 Exhibit 13B.

23 THE COURT: What Exhibit number was that, Mr.
24 Pilchak?

25 MR. PILCHAK: 13B, your Honor.

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1 THE COURT: 13B. Okay.

2 MR. PILCHAK: It's three pages.

3 A. Okay.

4 Q. Do you identify proposed Exhibit 13B as salaried
5 personnel, office personnel policies bearing your handwriting
6 in the second paragraph?

7 A. Yes.

8 Q. And they were signed on the last page by Valery
9 Kruczynski, correct?

10 A. Yes.

11 MR. PILCHAK: Move to admit proposed Exhibit 13B?

12 MR. FARRAR: No objection.

13 THE COURT: Okay. It's received.

14 (Defense Exhibit No. D-13B Admitted
15 Into Evidence)

16 BY MR. PILCHAK:

17 Q. Ms. Duffie, the handwriting that appears in the second
18 line where Saturday is scratched out and Friday is written in
19 and Friday is scratched out and Thursday is written in, is that
20 in your handwriting?

21 A. Yes, that's my writing.

22 Q. And that's because at some point in time after this policy
23 was written, the pay dates changed -- the pay days changed,
24 correct?

25 A. I think I did this when Valery signed it because I looked

1 at it and it didn't appear to be the correct days.

2 Q. Right, right. The pay days that were reflected in the
3 policy that existed had changed from whenever this policy was
4 written and this was not accurate?

5 A. Yeah. Because this looks like it was written in 2004.

6 Q. Okay. Yeah. And the reason that you see it was written
7 in 2004 is in the lower left-hand corner, correct?

8 A. Yes.

9 Q. And these policies that were written in 2004 reflect one
10 concept that we've heard in this courtroom, that management
11 does not intend for the workload to necessitate overtime,
12 correct?

13 A. Where is that at? I don't --

14 Q. It's in the third sentence of the paragraph entitled
15 "Hours".

16 A. Okay. I see it.

17 Q. Right. And just for the record, Ms. Kruczynski's
18 signature appears on the third page, correct?

19 A. Yes.

20 Q. Now, these personnel policies, they were kept in your
21 office, correct?

22 A. Yes.

23 Q. And when new employees were hired into Michigan Group, you
24 would be the person who would give them the personnel policy,
25 correct?

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1 A. No. This -- no. Normally I would give them to the
2 manager that was hiring them. The packets were in the drawer
3 with all their forms. The W-4 and the I-9 and everything was
4 clamped together in my file cabinet drawer.

5 Q. You would normally give them to the managers who hired the
6 employees to give to the employee they hired?

7 A. Right. I had packages for Select Title, Michigan United
8 Mortgage, RE/MAX, and LaVita Bistro.

9 Q. And you then gave the personnel policies to Ms.
10 Kruczynski?

11 A. I'd pull the packet out of my drawer, and yes.

12 Q. Because you hired her?

13 A. Joe hired her.

14 Q. I want to go through that process a bit. Before Ms.
15 Kruczynski was hired, you were interested in obtaining somebody
16 who had experience in QuickBooks, correct?

17 A. Yes.

18 Q. And -- you had converted Central over to QuickBooks
19 sometime in 2012, correct?

20 A. I believe 2012.

21 Q. And you had prior experience with QuickBooks, correct?

22 A. Yes.

23 Q. And nobody else in Central had experience with QuickBooks,
24 correct?

25 MR. FARRAR: Objection.

1 MR. PILCHAK: Strike that.

2 BY MR. PILCHAK:

3 Q. As far as you know, nobody else in -- well, let me
4 rephrase it. At that point in time you weren't relying upon
5 anybody else in Central to do QuickBooks work prior to Ms.
6 Kruczynski being hired, correct?

7 A. No, that's not correct. Linn was doing a lot of work in
8 QuickBooks.

9 Q. Prior to 2013?

10 A. Yes.

11 Q. Well, you needed to hire a person in addition to Linn in
12 order to work on QuickBooks' material, correct?

13 A. Yes, we needed an additional person.

14 Q. And you interviewed Valery Kruczynski, correct?

15 A. Jennie asked me to talk to her after she had gotten the
16 resumé to find out if she knew QuickBooks.

17 Q. My question to you, Ms. Duffie, is you interviewed Valery
18 Kruczynski, correct?

19 MR. FARRAR: Objection. Asked and answered. And I
20 believe this was covered last week quite a lot.

21 THE COURT: All right. Well, let's have it one more
22 time and then we'll move on.

23 MR. PILCHAK: Well, she hasn't actually talked about
24 it in cross.

25 THE COURT: Go right ahead. So overruled.

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1 MR. PILCHAK: Other people have.

2 BY MR. PILCHAK:

3 Q. You interviewed her, correct?

4 A. To find out if she knew QuickBooks.

5 Q. And neither Mr. DeKroub nor Ms. Steudle were present at
6 the interview; correct?

7 A. No.

8 Q. That's correct?

9 A. That's correct.

10 Q. And after you interviewed her, you felt that she had
11 enough experience in QuickBooks, correct?

12 A. She knew QuickBooks, yes.

13 Q. And you felt that she was a bright enough person to be
14 employed, correct?

15 A. Sure.

16 Q. And then you told Jennie Steudle about the interview,
17 correct?

18 A. Yes.

19 Q. And Steudle told you that if you felt that Valery had the
20 knowledge of QuickBooks, that you should go talk to Mr.
21 DeKroub, correct?

22 A. Yes.

23 Q. And you told Mr. DeKroub that her background in QuickBooks
24 was what you were looking for, correct?

25 A. That I thought it might be, yes.

1 Q. And Mr. DeKroub authorized an expenditure for Ms.

2 Kruczynski, correct?

3 A. Yes, he indicated in an e-mail to me to offer her the job.

4 Q. And you were -- you actually were the person who conveyed
5 the job offer to her?

6 A. Right. It was from a e-mail. Joe and I were sitting
7 there typing the e-mail together.

8 Q. I see, okay. And turn to Exhibit 28. Would you identify
9 that as the e-mail chain in which you conveyed the job offer?

10 A. Yes.

11 MR. PILCHAK: Move to admit proposed Exhibit 28.

12 MR. FARRAR: No objection.

13 THE COURT: Okay. Exhibit 28 is received. And you
14 may publish it to the jury, if you wish.

15 (Defense Exhibit No. D-28 Admitted
16 Into Evidence)

17 MR. PILCHAK: Thank you, your Honor.

18 BY MR. PILCHAK:

19 Q. Ms. Duffie, this paragraph here is the first paragraph to
20 Ms. Kruczynski in this Exhibit, correct?

21 A. I'm sorry. I was reading it. Could you repeat that? I
22 apologize.

23 Q. The paragraph that's up on the screen that starts Will
24 Steinmetz and his assistant Sherry.

25 A. Oh.

1 MR. FARRAR: Which e-mail are we referring to,
2 because that's not the right page?

3 MR. PILCHAK: Second page of 28.

4 MR. FARRAR: So not -- okay. Thank you.

5 MR. PILCHAK: I mean, e-mail chains, right,
6 unavoidably read from back to front?

7 THE COURT: But we want the record and everyone to be
8 clear on what page you're on.

9 MR. PILCHAK: I see.

10 THE COURT: If you can just say second page.

11 MR. PILCHAK: Yes.

12 BY MR. PILCHAK:

13 Q. Ms. Duffie, we're starting with --

14 A. The back page.

15 Q. -- the second page and moving forward because of the
16 nature of the e-mail chains.

17 A. Yes.

18 Q. The first sentence says that Will Steinmetz and his
19 assistant Sherry provided me with a copy of your resumé. That
20 was your words, correct?

21 A. Yes.

22 Q. And your words were, "I am currently looking for someone
23 to assist in the accounting department." Correct?

24 A. Yes.

25 Q. And when you said accounting department, did you mean

1 Central?

2 A. Yes.

3 Q. Okay. So you agree Central was the accounting department?

4 A. Central was a conglomeration of everything.

5 Q. And so just in terms of the way you referred to it in
6 day-to-day parlance, on this particular occasion you referred
7 to Central as the accounting department, correct?

8 A. That's what I said in the e-mail, yes.

9 Q. Okay. And then you ask if she was still looking for
10 employment. And you ask what would be a convenient time for
11 you to interview, correct?

12 A. Yes.

13 Q. And when you said, "I am currently looking for somebody to
14 assist in the accounting department," you didn't say Mr.
15 DeKroub was or Ms. Steudle was or even we were, correct?

16 A. No, I didn't word it that way.

17 Q. Okay. And then going to the first page, the next
18 communication in the e-mail chain --

19 MR. FARRAR: Your Honor, I can't see the top of the
20 e-mail.

21 THE COURT: Okay. I believe, do you have it on your
22 desk?

23 MR. FARRAR: Okay.

24 MR. PILCHAK: We'll cover the bottom part of the
25 communication then move up.

1 THE COURT: Okay.

2 BY MR. PILCHAK:

3 Q. The next at the bottom of page 1 of Exhibit 28 is, I
4 dropped off letters of recommendation at your office. Correct?

5 A. Yes. I see that.

6 Q. And then Ms. Kruczynski dropped off letters of
7 recommendation from various prior employers and people who knew
8 her, correct?

9 A. I believe so, yes.

10 Q. And she brought them to your attention. They were dropped
11 off for you, correct?

12 A. It looks like she had dropped them at the front desk and
13 somebody must have brought them back to Central.

14 Q. Right. And then, in fact, you confirmed towards the third
15 of the way down on the first page is that after the letters of
16 recommendation were brought to the front desk, they brought
17 them back to you?

18 A. Right.

19 Q. And did they have your name written on the envelope or
20 something?

21 A. I don't recall.

22 Q. And you indicated that you were finally able to speak to
23 Joe. That's a conversation we just talked about, correct?

24 A. Yes.

25 Q. And he had authorized 35,000 to start, right?

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1 A. Yes.

2 Q. And the whole purpose of hiring Ms. Kruczynski was to take
3 QuickBooks work off of your desk, right?

4 A. No, that wasn't the entire reason to hire Valery. We were
5 short a person in Central for many things.

6 Q. Well, one of the -- you were doing the bulk of the
7 QuickBooks work, correct?

8 A. Linn and I were both doing it.

9 Q. Well, but if you hired Ms. Kruczynski, she could take
10 QuickBooks work off of your desk, right?

11 A. Well, then all three of us would be able to do it. We
12 would be able to spread the work around more.

13 Q. Well, was Ms. Felker complaining about her workload?

14 A. She was overloaded a good deal of the time, yes. We all
15 were.

16 Q. When Ms. Kruczynski started working in Central, you found
17 that she made mistakes, correct?

18 A. Sure.

19 Q. And you felt that she was moving too slowly on a lot of
20 the processes, correct?

21 A. It was taking her a little bit longer to learn some of the
22 things.

23 Q. And you and she had discussions regarding the pace of the
24 work, correct?

25 A. I'm sure we did.

1 Q. And at one point in time you took her aside and told her
2 that if she was going to be able to keep up that she needs to,
3 quote, move with the program, correct?

4 A. She was complaining that she could not keep up.

5 Q. And you told her she needs to move with the program,
6 correct?

7 A. We all had to keep up.

8 Q. Did you tell her that?

9 A. Yes.

10 THE COURT: Ms. Duffie, if you can, answer the
11 question.

12 THE WITNESS: Yes.

13 THE COURT: Thank you.

14 BY MR. PILCHAK:

15 Q. There were some other problems with her. She dressed
16 inappropriately for work, correct?

17 A. There was a day that she showed up in a pink jogging suit.

18 Q. And sometimes you were unable to locate her, correct?

19 A. Yes.

20 Q. One time you found her sitting in a truck with a vendor,
21 correct?

22 A. Yes.

23 Q. You talked to Jennie Steudle on how to deal with that,
24 correct?

25 A. Actually, somebody had complained to Jennie Steudle about

1 Valery in the parking lot. And Jennie came to me and told me
2 what was going on and told me that we couldn't have that.

3 Q. And she told you you've got to stop that, correct?

4 A. She said I needed to say something.

5 Q. Okay. And she said -- okay. Steudle told you to say
6 something to her to stop the conduct that you found
7 problematic, correct?

8 MR. FARRAR: Objection. I believe a
9 mischaracterization of testimony.

10 THE COURT: Why don't you ask the question a slightly
11 different way.

12 BY MR. PILCHAK:

13 Q. You -- Ms. Steudle directed you to have the conversation
14 with Ms. Kruczynski regarding being unable to locate her and
15 sitting with a vendor in the truck, etcetera, correct?

16 A. The conversation was that she was telling me I needed to
17 tell Valery not to be sitting in a parking lot with a vendor.

18 Q. Okay. And eventually you went to both Jennie and Joe to
19 discuss Valery's performance, correct?

20 A. I don't recall particularly doing that. I know I had
21 talked to Jennie at one point. And then Jennie -- and then Joe
22 brought it up to me at a later point.

23 Q. In any case, you had a discussion with Jennie and Joe
24 about Valery's performance, correct?

25 A. Yes.

1 Q. And Joe had no firsthand knowledge about Valery's
2 performance, correct?

3 MR. FARRAR: Objection. He's asking her to testify
4 what someone else's knowledge was.

5 THE COURT: Okay. Sustained.

6 BY MR. PILCHAK:

7 Q. Ms. Duffie, as far as you know, Mr. DeKroub had no
8 firsthand knowledge about how Valery was performing in Central,
9 correct?

10 A. No. I think only what Jennie had told him.

11 Q. And you would agree with me that Jennie got pretty much
12 her perspective in terms of Valery's performance from you,
13 correct?

14 A. No. I wouldn't say that necessarily. We both had issues.
15 She had had issues with Valery herself personally.

16 Q. Well, I'm talking about her learning procedures, etcetera.

17 A. Both. We both did.

18 Q. In any case, after your discussions with Joe and Jennie
19 about performance, you were authorized to place an ad in
20 Craigslist, correct?

21 A. Yes. I was directed to put an ad in.

22 Q. And you actually drafted the language for the ad, correct?

23 A. I believe so.

24 Q. And the purpose of the ad was to find a replacement for
25 Valery, right ?

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1 A. Yes.

2 Q. And when you set up the ad, people responding
3 electronically with their e-mails to the ad, those responses
4 would go to your e-mail address, correct?

5 A. Yes. Because I was the person that put the ad in.

6 Q. And you collected a number of e-mails, correct?

7 A. There were a few, yes.

8 Q. And if you would turn to proposed Exhibit 31. Do identify
9 proposed Exhibit 31 as a compilation of resumés that you
10 received by e-mail from candidates in response to the
11 Craigslist ad you had written and posted?

12 A. Yes.

13 MR. PILCHAK: Move to admit proposed Exhibit 31.

14 MR. FARRAR: No objection.

15 THE COURT: Okay. It will be received.

16 (Defense Exhibit No. D-31 Admitted
17 Into Evidence)

18 MR. PILCHAK: May I display, your Honor?

19 THE COURT: Yes.

20 BY MR. PILCHAK:

21 Q. In the lower right-hand corner, the documents are
22 paginated. I would like you to turn to page 0072.

23 A. Seven two.

24 Q. That is your handwriting in the upper right-hand corner,
25 correct?

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1 A. Yes.

2 Q. Does Friday 9:00 AM mean that you interviewed her on
3 Friday at 9:00 AM?

4 A. I believe so.

5 Q. And the lower part of the comment there says good real
6 estate background, correct?

7 A. Yes.

8 Q. And then you wrote the comment, little rough, correct?

9 A. Yes.

10 Q. That was a observation that you made about her personally,
11 correct?

12 A. Yeah. She was in jeans.

13 Q. And if you turn back to page 75. This is an e-mail from
14 somebody by the name of Amy Perkins, correct?

15 A. Yes.

16 Q. And it says interview 3-7-14, 4:00 PM. Does that mean
17 that you interviewed her on March 7th, 2014?

18 A. I would guess I did.

19 Q. Okay. And apparently you talked to her about the
20 25-minute commute that would be involved from Williamston to
21 Brighton, correct?

22 A. Right. Yes.

23 Q. And you talked to her about some other things such as late
24 hours?

25 A. Yeah. I'm not sure what I might have been questioning.

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1 Q. And then there's a restaurant, it says restaurant
2 bookkeeping experience; is that correct?

3 A. Yes. BK experience. I'm guessing bookkeeping.

4 Q. And construction bookkeeping experience. Is that what we
5 see there?

6 A. I think that's probably what it is.

7 Q. And good personality, correct?

8 A. Right.

9 Q. You wrote these comments so that you might be in a
10 position to make a recommendation on one of these applicants,
11 correct?

12 A. Actually I knew that I would be giving all of these to
13 Jennie. So I just wanted my notes on there so when she asked
14 me I would know who we were talking about.

15 Q. Because -- well, you think Jennie has the ability to
16 assess skills for bookkeeping?

17 MR. FARRAR: Objection.

18 MR. PILCHAK: I'll withdraw it.

19 BY MR. PILCHAK:

20 Q. Likewise, on the Victoria Fryatt resumé, which is at page
21 0086.

22 A. Eight six.

23 Q. You interviewed her and made comments about her, correct?

24 A. Right. I did.

25 Q. And then the top page 0066 --

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1 A. Zero zero six six?

2 Q. The top Exhibit -- top page of that Exhibit.

3 A. Okay. Yes.

4 Q. Over on the right it says you interviewed her on March
5 8th, correct?

6 A. Saturday, March 8th at 10:00 AM.

7 Q. Okay. And it says she would like \$22 an hour, correct?

8 A. Yes.

9 Q. And starting at the bottom you have a question mark. Too
10 rigid. You said good personality, reserved, very interested
11 and very sharp, correct?

12 A. Yes.

13 Q. And this particular resumé you wrote the words offered her
14 \$20 an hour to start?

15 A. Yes. I told her I thought that Joe would only go 20 to
16 see if she would still be interested.

17 Q. It says offered her. You didn't offer --

18 A. It was a note to myself for something that I needed to ask
19 Joe.

20 Q. It's true that at some point in time while you were in
21 Central that Mr. DeKroub offered to relieve you of
22 responsibility of doing bookkeeping for LaVita Bistro, correct?

23 A. Yes. I think sometime in 2014.

24 Q. And in fact, you refused to let him take those duties from
25 you, correct?

1 A. No. I told him if that's what he wanted to do,
2 absolutely. I did not ever say no to Joe DeKroub. I wouldn't
3 say no to Joe DeKroub.

4 Q. Okay. Your resumé, Exhibit 7, indicates that you were
5 responsible for payables, correct?

6 A. Yes.

7 Q. And you would agree with me that you did not have to call
8 Mr. DeKroub to pay such routine things such as the electric
9 bill or the cable bill or things like that, correct?

10 A. No. I was instructed when I came to Central in 2011 which
11 bills that you paid first every month. And which bills you
12 paid just based on due dates.

13 Q. Okay. And if there was an irregular bill then if it was a
14 one-time event, then you would contact Mr. DeKroub to find out
15 if he had authorized the expenditure?

16 A. Depending on what it was. I mean, if it was something
17 that wasn't usual, you know, the light bill, the phone bill,
18 you know.

19 Q. But at all times even when Mr. DeKroub had authorized
20 either a routine bill or a one-time event, it was always your
21 challenge as to when the bill would be paid, correct?

22 A. As I said, I was instructed to pay specific bills at
23 certain times and then pay bills based on their due dates.

24 Q. Okay. Would you turn to proposed Exhibit 66? Do you
25 identify proposed Exhibit 66 as communications with a vendor

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1 regarding payments that are 30 plus days past due?

2 A. Yes.

3 MR. PILCHAK: Move to admit proposed Exhibit 66.

4 THE COURT: Is there any --

5 MR. FARRAR: Your Honor, I'd like to raise a
6 relevance objection.

7 THE COURT: Would you like a sidebar? I don't want
8 to discuss it -- we're going to have a sidebar. Maybe this is
9 a good time to take a little break.

10 JUROR 2: Yes, please.

11 THE COURT: Please rise for the jury. And remember,
12 just like last week, not to discuss the case amongst
13 yourselves until you're instructed to begin deliberations.

14 (Jury Out)

15 THE COURT: Mr. Pilchak, what would be the relevance
16 of this?

17 MR. PILCHAK: The witness just testified that she
18 paid bills as instructed when they were due. Our purpose is
19 to show that she actually exercised significant discretion
20 consistent with the administrative duties as to which bills
21 would be paid. And in this particular case, it's a 20-year
22 vendor who's, in essence, begging for payment. And Ms. Duffie
23 delays and does not make the payment.

24 THE COURT: Okay. Let me read this. Because I just
25 -- please be seated, anybody who would like to be seated. So

1 you're saying that Ms. Duffie had the responsibility to decide
2 what to pay and what not to pay and she failed to pay the
3 20-year vendor and the 20-year vendor got sort of pissed off
4 for lack of a legal term?

5 MR. PILCHAK: Right.

6 THE COURT: Okay. Let me hear the response.

7 MR. FARRAR: Your Honor, I don't -- looking at this
8 e-mail, I don't think it says any of that. She's here to
9 testify. She testified. I mean, this is -- looking at this,
10 I don't even believe there's a response from her. These are
11 e-mails directed to her. But they're not probative of the
12 reason behind why this was not being paid or who made the
13 decision not to pay, allegedly pay this vendor.

14 It's not as if there's some e-mail from Ms. Duffie
15 saying that, you know, this is why I didn't pay it or
16 something. I mean, it's just e-mails to her with no response.
17 And further, I'd just note this isn't a termination case where
18 performance is at issue. So I don't see the relevance in
19 this.

20 THE COURT: Mr. Pilchak, I don't see how these
21 e-mails are relevant. For the reasons Mr. Farrar is stating,
22 which is that they are e-mails only from this Jeff Thompson to
23 Ms. Duffie without her saying -- if she were to have an e-mail
24 in here, back off Thompson, I'm making decisions here, or
25 something like that. But I think you can ask her. Why don't

1 you ask her about -- he's a snow removal guy, right? Salt and
2 snow guy?

3 MR. PILCHAK: Um-hum.

4 THE COURT: Ask her how she made those decisions.
5 But the exhibit doesn't move the ball forward in terms of any
6 material issue in your case. All right. So why don't we all
7 --

8 MS. GUSFA: Just the one issue about scheduling. I
9 believe we had said that the next witnesses that we will be
10 calling would be here at 11:00. And so I'm just getting
11 concerned because we've had to turn them away three times. So
12 I'm just wondering --

13 THE COURT: Well, this is now in your court. I mean,
14 I think Mr. Pilchak's finishing up.

15 MR. PILCHAK: Very, very close to being done.

16 MS. GUSFA: Great.

17 THE COURT: So it depends on how much time you have
18 for redirect.

19 MS. GUSFA: And then I believe the witness needs to
20 use the restroom.

21 THE COURT: Okay. Let's all use the restroom.

22 THE WITNESS: Thank you, so much.

23 THE COURT: All right. So the Court is in recess for
24 a moment here.

25 (Brief Recess)

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1 THE COURT: Anything before we bring the jury in?

2 MR. FARRAR: No, Your Honor.

3 MR. PILCHAK: No, Your Honor.

4 THE COURT: You can be seated in the event it takes
5 them a minute.

6 THE CASE MANAGER: All rise for the jury.

7 (Jury In)

8 THE COURT: Welcome back. Now court time is like dog
9 years where one year is seven years. If we say five minutes,
10 it's probably 15. But we do our best to keep everything
11 moving. So please be assured we're being productive and doing
12 our best. Okay. So Mr. Pilchak.

13 BY MR. PILCHAK:

14 Q. Ms. Duffie, when you assumed the position in Central in
15 March of 2011 after being in Ann Arbor prior to that, it's true
16 that you did not ask Mr. DeKroub for a raise, correct?

17 MR. FARRAR: Objection. Relevance.

18 THE COURT: Overruled.

19 THE WITNESS: No.

20 BY MR. PILCHAK:

21 Q. And one of the reasons you didn't ask for a raise at that
22 point in time is that you knew you would have to get up to
23 speed --

24 A. Yes.

25 Q. -- for the assignment, correct?

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1 A. Yes.

2 Q. And you would have to prove yourself, correct?

3 A. Yes.

4 Q. And then we've talked about Exhibit 35 in other context.
5 But you would agree that when Ms. Steudle said save this
6 information for your discussion with Joe, that was on the
7 subject of you talking to Joe about getting a raise, correct?

8 A. I'm not sure.

9 THE COURT: What Exhibit number is that, please?

10 MR. PILCHAK: Thirty-five, your Honor.

11 THE COURT: Thirty-five. Okay. I was looking at 36.

12 BY MR. PILCHAK:

13 Q. You're not sure, Ms. Duffie?

14 A. No, I'm not sure what the discussion with Joe would have
15 been.

16 MR. FARRAR: Your Honor, I would object. Because
17 this is not something she wrote. It's asking her to interpret
18 someone else's words.

19 THE COURT: Okay. Sustained in that she's already
20 said I'm not sure.

21 THE WITNESS: I'm not sure.

22 MR. PILCHAK: No, actually --

23 THE COURT: If you have a question that she can
24 answer, please proceed.

25 BY MR. PILCHAK:

1 Q. Would you turn to page 284 and see if that refreshes your
2 recollection?

3 THE COURT: And that's of her deposition?

4 BY MR. PILCHAK:

5 Q. Yes. Of your deposition. Let me rephrase the question.
6 In your communications with Ms. Steudle, she wanted you to go
7 to Mr. DeKroub, speak up and ask for a raise, correct?

8 MR. FARRAR: Objection for the same basis we just
9 discussed.

10 THE COURT: Okay. Sustained. Try rephrasing the
11 question.

12 BY MR. PILCHAK:

13 Q. Ms. Duffie, you had conversations with Ms. Steudle about
14 the prospect of a raise, correct?

15 A. I think at one point we had talked about it in January of
16 2014.

17 Q. Okay. And she was encouraging you -- you can put your
18 transcript down. We're not referencing it right now. She was
19 encouraging you to speak to Joe DeKroub about a raise, correct?

20 A. Yeah. She had mentioned that to me. Yes.

21 Q. But you just never did, did you?

22 A. As I said, it was in January of 2014 right before I left.

23 Q. But you never did?

24 A. No.

25 Q. One of the duties that Central did was compiling

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1 information regarding agents and their sales, correct?

2 A. Yes.

3 Q. And one of the things that Central did was compiling
4 statistics regarding whether or not they had paid their full
5 desk fee, correct?

6 A. Yeah. That was automatically set up in Lone Wolf to
7 calculate if you asked it.

8 Q. Right. Right. And as agents' contracts came up for
9 renewal, you would pull a report and provide it to Ms. Steudle,
10 correct?

11 A. Either Valery, Linn, or myself would run a report for her.

12 Q. But you did that?

13 A. We all did it.

14 Q. But you did it? That's all I'm asking.

15 A. I did it, too. We all did it, yes.

16 Q. And the report would illustrate who had not paid their
17 full desk fee, correct?

18 A. There were like three pages to the report. I'm not -- I'm
19 sure it was in there somewhere.

20 Q. And Ms. Steudle would use the report to renegotiate
21 contracts, correct?

22 A. As far as I know, yes.

23 Q. In other words, if somebody hadn't paid their desk fee in
24 the prior year, they may have to increase the percentage of
25 their three percent commission that gets paid with each deal?

1 A. And I don't know how they made those decisions.

2 Q. I'm getting to the end, Ms. Duffie. But I do want to ask
3 you with regard to Exhibit Number 7, Defense Exhibit 7, you
4 would agree that your statement of your duties in that resumé
5 with regard to RE/MAX Platinum is accurate, correct?

6 MR. FARRAR: Objection. Asked and answered.

7 THE COURT: I'll permit it.

8 MR. PILCHAK: I'm sorry?

9 THE COURT: I said I'll permit it.

10 THE WITNESS: You asked me if this was accurate? Is
11 that what you said?

12 BY MR. PILCHAK:

13 Q. Yes. It's not --

14 THE COURT: And he said specifically with respect to
15 RE/MAX Platinum.

16 THE WITNESS: Just for the RE/MAX Platinum. This is
17 a highlight of what I was doing. Obviously I'm trying to find
18 another job. And I would gloss it up a little. I mean,
19 accounts payable sounds so much better than cutting checks.
20 But I mean, so yes, I guess.

21 BY MR. PILCHAK:

22 Q. But you stand by your statement that in the third bullet,
23 that one of your duties was implementation for procedures to
24 process real estate transactions and assure that all
25 documentation is complete and in compliance with real estate

1 laws, right?

2 A. Basically what I was doing was working with procedures
3 that had been in place for years.

4 Q. I understand. But that -- you stand by your statement
5 that that was one of your duties, implementation of procedures
6 to process real estate transactions and assure all
7 documentation to be complete and in compliance with real estate
8 laws, correct?

9 A. I was processing real estate transactions.

10 Q. And you implemented procedures to assure that the
11 documentation was complete and in compliance with real estate
12 laws, correct?

13 A. No. Basically I carried through on procedures that were
14 already in place.

15 Q. Okay. Are you saying that your statement that you
16 implemented them is a misstatement?

17 A. No. It's just a glossier version of, you know, reading an
18 instruction manual on how to do things.

19 Q. Okay. And the fourth bullet where it says that you
20 maintain the real estate escrow account in compliance with
21 state real estate laws, that's an accurate statement of your
22 responsibilities, too, correct?

23 A. I deposited checks within 48 hours.

24 Q. And the purpose of this resumé -- you mailed it out to
25 employers, correct?

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1 A. Yes.

2 Q. And the purpose was to try to find employment, correct?

3 A. Yes.

4 Q. And the purpose of trying to find employment was to get
5 money, correct?

6 A. To have a job, yes.

7 Q. And they would pay you money, correct?

8 A. Well, I hope they would pay me.

9 Q. Yeah?

10 A. I mean, I guess I don't understand.

11 Q. Well, to the extent that you're trying to now characterize
12 this as glossing over or enhancing in not representing the
13 responsibilities that you're setting -- that you actually did,
14 I guess my question to you is should anybody have any --

15 MR. FARRAR: I object to the --

16 MR. PILCHAK: -- concern that you're glossing over or
17 embellishing any of your statements here today to get somebody
18 else to --

19 THE COURT: Just a minute, Ms. Duffie.

20 MR. FARRAR: I would just object and ask that the
21 commentary at the beginning be stricken. And then the
22 question was very long and confusing. I just ask that it be
23 reworded.

24 THE COURT: Can you just make a slightly shorter
25 question?

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1 BY MR. PILCHAK:

2 Q. To the extent that this resumé might reference or it might
3 represent any glossing over or enhancing or embellishing of
4 what you actually did at RE/MAX Platinum, do we need to be
5 concerned about whether you're embellishing or glossing over or
6 enhancing any of your testimony today?

7 MR. FARRAR: Objection. Argumentative.

8 THE COURT: She can answer.

9 THE WITNESS: No.

10 BY MR. PILCHAK:

11 Q. Ms. Duffie, you were in charge of the payroll from March
12 of 2017 through -- March of 2011 through March of 2014,
13 correct?

14 A. I input the payroll, sure.

15 Q. But you were in charge of the whole payroll function,
16 correct?

17 A. No, I don't believe so.

18 Q. Well, who else was in charge of payroll, if not you?

19 A. Well, the managers. The managers of the entities would
20 give me the hours, confirm any hours, give me rates of pay.

21 Q. But you processed the payroll?

22 A. I typed it into QuickBooks and generated checks.

23 Q. Was there anybody that was more responsible for processing
24 payroll than you?

25 A. Well, ultimately, like I said, the pay rates and any

1 conditions of employment came from the managers. They all had
2 to provide me with hours, wages, any of the info that I was
3 putting into QuickBooks.

4 Q. Well, I understand that they might give you the wage rate.
5 But in terms of the payroll practices for the company, you were
6 the person that were responsible, were you not?

7 A. I was the one that was typing into QuickBooks.

8 Q. And you -- throughout the entire time if there are any
9 problems or issues or improprieties with regard to how hourly
10 employees were paid, you never changed those practices,
11 correct?

12 MR. FARRAR: Objection. I believe this has all been
13 covered.

14 THE COURT: Sustained.

15 BY MR. PILCHAK:

16 Q. And Ms. Duffie, you would agree with me that you had more
17 than enough work to do every week to fill 40 hours of your
18 time, correct?

19 A. I'm sorry. I had more than enough work to fill my day?

20 Q. Yes.

21 A. Yes.

22 Q. There was no realistic prospect that you would ever be
23 sent home for lack of work, correct?

24 A. I don't think any of us would.

25 Q. Right. And you were allotted more vacation time than you

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1 could use, correct?

2 A. My vacation time, it was structured when I was at RE/MAX
3 All Stars before the merge. And whatever it was was carried
4 through.

5 Q. But you testified on direct to your attorney that you
6 could never even use all of the vacation time that you had?

7 A. No, I really --

8 MR. FARRAR: Objection. Mischaracterization of her
9 testimony.

10 THE COURT: Sustained.

11 MR. PILCHAK: Well, you testified that you could only
12 take seven or nine days of vacation, correct?

13 THE COURT: Exactly. Okay.

14 THE WITNESS: I said -- I didn't say that I could
15 only take that.

16 BY MR. PILCHAK:

17 Q. That you did only take?

18 A. I did only take seven or eight days of vacation a year.

19 Q. So you were allotted more vacation time than you even were
20 able to use, correct?

21 A. I used less than -- sure, I definitely used less.

22 Q. And the company had a system where even hourly employees
23 were paid 40 hours if they worked less or if they worked more
24 because they had this banked time system, correct?

25 A. Everybody used that.

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1 Q. Well, the system was in place, correct?

2 A. As of 2009, I believe.

3 Q. Right. And for 2011 through 2014, you processed your own
4 paycheck, correct?

5 A. Yes.

6 Q. Wouldn't you agree with me that all of those factors, all
7 of those circumstances essentially guaranteed that you would be
8 paid 40 hours per week? And in fact, that's exemplified by the
9 fact that you were paid 40 hours a week for years and years and
10 years?

11 MR. FARRAR: Objection. Just to the form.

12 THE COURT: Can you rephrase the question? I want to
13 hear it again.

14 BY MR. PILCHAK:

15 Q. Don't you agree with me that all of those circumstances --
16 you had more than enough work, never a prospect you'd be sent
17 home early for lack of work, you couldn't use all of the
18 vacation time you had available, the company had a system where
19 even hourly employees were paid 40 hours, and you would process
20 your own paycheck. Wouldn't you agree with me that all of
21 those circumstances --

22 MR. FARRAR: Objection as to form.

23 THE COURT: Sustained as to form. I don't think we
24 heard any testimony about hourly employees being paid 40
25 hours.

1 MR. PILCHAK: That's the bank time system. We talked
2 extensively about it.

3 THE COURT: Okay. Can you break your question down?

4 BY MR. PILCHAK:

5 Q. Ms. Duffie, all of the circumstances of employment at
6 RE/MAX Platinum in essence guaranteed your -- that you would be
7 paid your salary amount, whatever you call it, or your 40 hours
8 per week every week, did they not?

9 A. Because I was told that I could not get paid for any hours
10 over 40, that I had to bank the time. So I never received
11 payment for anything that I worked over 40 hours.

12 Q. I just have a few questions about what your attorney asked
13 you on his questions. Turn to page 38, please. I'm sorry.
14 Exhibit 38. This is the statement about collecting 1099's.

15 A. Oh, wait. I'm sorry.

16 Q. Exhibit 38.

17 A. Sorry. I was on 37. Okay.

18 Q. Right. It's agreed you have to get tax ID numbers for
19 people that you send 1099's to, correct?

20 A. Yes. You have to have a -- yes. You have to have a
21 number. You can't do a 1099.

22 Q. There's two ways to approaching it. Either you collect
23 them at the time you do business with them or you call them at
24 the end of the year and get the number then, correct?

25 MR. FARRAR: I'll object. I mean, we've discussed

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1 this exhibit I'm sorry to say a lot. I mean, it seems like
2 we're getting very repetitive here.

3 THE COURT: Overruled.

4 MR. PILCHAK: I haven't discussed it.

5 THE COURT: He has his opportunity to discuss it.

6 BY MR. PILCHAK:

7 Q. Simple question. Did you either do it at the time you do
8 business or you do it at the end of the year, correct?

9 A. And the procedure that we had is we were supposed to input
10 that when we put the vendor in as a new vendor.

11 Q. Can you answer my question?

12 A. I did.

13 Q. Okay.

14 A. We did it when we first did business.

15 Q. And apparently prior to this e-mail that you sent out,
16 people had not been collecting the tax ID numbers at the time
17 they did business, correct?

18 A. It appears that they had neglected to do so.

19 Q. All right. And that's why you say under -- going forward
20 under no circumstances are checks to be written to outside
21 vendors without confirming tax ID number, correct?

22 A. Yes. And that's repeating the procedure.

23 Q. Okay. Would you say that's implementing the procedure?

24 A. No.

25 Q. Would you turn to Exhibit 35? This is the e-mail

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1 regarding saving labor hours on brokers who had corporations.
2 Isn't it true that prior to January of 2013 there had been a
3 complicated process with regard to figuring out agents,
4 commissions, and deductions when they had corporations?
5 Correct?

6 A. Yeah. It was a manual -- it turned it into a manual
7 process instead of an automated process. So I changed a word
8 on how the agents were added.

9 Q. Well, in determining how to fix this problem, one of the
10 first things you did is you contacted the State of Michigan,
11 correct?

12 A. Yes. I asked a question.

13 Q. And you could not get a straight answer from the State of
14 Michigan, correct?

15 A. No. They really couldn't give me an answer.

16 Q. Then you spent some time researching it on your own,
17 correct?

18 A. Yes. I Google'd it.

19 Q. And one of the things that you found was something in the
20 Michigan Association of Realtors archives, correct?

21 A. Yes. It was an article.

22 Q. And you made a presentation of a proposal based upon what
23 you found in the Michigan Association of Realtor archives to
24 Bill Russell, correct?

25 A. I printed it and gave it to him, yes.

1 Q. Okay. And you made that suggestion to him to see whether
2 or not it would pass muster, correct?

3 A. I asked him if it was okay to do that.

4 Q. And he said -- well, you proposed whatever was in the
5 archives article to him, correct?

6 A. I let him read it, yes.

7 Q. And he agreed that what you had put into his hand would
8 solve the problem you were trying to solve?

9 A. No. He agreed that it would be acceptable. It would be
10 within whatever the law was or whatever the requirement was.

11 Q. And whatever you proposed to him involved the problem that
12 you had, correct?

13 A. Well, in telling me that it was within the law, I could go
14 in and change one word in the software and wouldn't have
15 mistakes or manual calculations being done.

16 Q. Ms. Duffie, you testified about making -- in fact, there
17 are some e-mails in your exhibits about making travel
18 arrangements, correct?

19 A. Yes.

20 Q. A number of those are business travel events, correct?

21 A. It was a mixed bag. Business and he would go to Florida
22 and back.

23 Q. And that's the type of duty that easily could be delegated
24 to somebody paid less than you such as Erica or Linn, correct?

25 MR. FARRAR: Objection. Form.

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1 THE COURT: Can you restate your question?

2 BY MR. PILCHAK:

3 Q. Making travel arrangements is something that easily could
4 have been delegated to Erica or Linn, employees that were paid
5 less than you, correct?

6 THE COURT: You can answer.

7 THE WITNESS: Joe usually asked me direct. Joe or
8 Judy asked me directly or contacted me directly just to do it.
9 I don't know if either of those ladies ever did any of his
10 arrangements.

11 BY MR. PILCHAK:

12 Q. Ms. Duffie, do you remember testifying about one of your
13 exhibits which discusses Erica Hahn's requested days off?

14 A. Do you have something I could see? I think there were
15 several.

16 THE COURT: Were there several on her days off?

17 THE WITNESS: I think there were several
18 communications.

19 MR. PILCHAK: Well --

20 THE COURT: I think we all recall that.

21 MR. PILCHAK: Right.

22 THE COURT: So Mr. Pilchak, if you want to generally
23 ask her about it.

24 MR. PILCHAK: Right. Let me just get to the Exhibit.

25 THE COURT: Okay.

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1 BY MR. PILCHAK:

2 Q. If you turn to defense proposed Exhibit 60, do you
3 identify defense proposed Exhibit 60 as an e-mail from you to
4 Erica Hahn regarding her requested dates?

5 A. Yes. This is sent to Erica and Jennie Steudle.

6 Q. Okay. And do you recall that the Exhibit that you
7 presented was dated approximately May 3, 4, 5, somewhere in
8 that time period, 2012?

9 A. Wait a minute. You're talking about something different
10 than this e-mail?

11 Q. Yeah. Let me find your e-mail if we need to do it. Well,
12 in any case, I don't want to leaf through it.

13 THE COURT: Is there any objection? Are you asking
14 to have this admitted?

15 MR. PILCHAK: Moving to admit.

16 MR. FARRAR: We'd raise a relevance objection.

17 THE COURT: Overruled. Do you have any other
18 objection?

19 MR. FARRAR: No, Your Honor.

20 THE COURT: Okay, then. It's received.

21 (Defense Exhibit No. D-60 Admitted
22 Into Evidence)

23 BY MR. PILCHAK:

24 Q. Ms. Duffie, this is an e-mail dated May 7th, 2012 where
25 you're requesting that Erica put those requested dates that she

1 wanted off on a monthly calendar so that you and she can go
2 over them and see what days will work, correct?

3 A. Yes. Jennie Steudle had directed me to send this and ask
4 to forward it in a calendar format.

5 Q. You heard Mr. DeKroub's testimony that he would confer
6 with you and say you need to deal with your employees so they
7 respect you as the boss. You were in court when he testified
8 --

9 MR. FARRAR: I'd object to the characterization of
10 Mr. DeKroub's testimony.

11 THE COURT: Okay. Let him --

12 BY MR. PILCHAK:

13 Q. You would agree that he said in words or substance that he
14 at times coached you to deal with your employees so they would
15 perceive you as the boss?

16 A. No, that never happened.

17 MR. FARRAR: Objection.

18 THE COURT: Overruled.

19 BY MR. PILCHAK:

20 Q. I'm just asking if you heard him testify to that?

21 A. I heard him say that, but that never happened.

22 Q. He never told you to coach your employees and deal with
23 your employees?

24 A. No, no.

25 Q. I just want to go through a number of exhibits that

1 haven't been admitted for the jury. Turn to proposed Exhibit
2 50. Do you identify proposed Exhibit 50 as an e-mail to Erica
3 Hahn directing her to send a certain letter?

4 A. Yes. This was is some minor or some notes I left her when
5 I was covering for her when she was off on vacation.

6 MR. PILCHAK: Move to admit proposed Exhibit 50.

7 MR. FARRAR: Your Honor, I would just object to
8 relevance. It's repetitive and cumulative. But other than
9 that, we have no objection.

10 THE COURT: Let me understand, Ms. Duffie. This is
11 something that you sent to Erica because you were doing
12 Erica's job when she was on vacation?

13 THE WITNESS: Yeah. I was receiving all the
14 information on the D & D Real Estate. At that time she had
15 been handling that. And she had been off. And Dave Vowell,
16 the manager, came in and told me that Erica needed to do that.
17 And I thought I had left her -- I left her a series of notes
18 on her desk. But I thought I might have neglected because
19 Dave called me back and asked me why it hadn't been done.

20 THE COURT: Okay. It will be received.

21 (Defense Exhibit No. D-50 Admitted
22 Into Evidence)

23 BY MR. PILCHAK:

24 Q. And turn to proposed Exhibit 53. Could you identify
25 proposed Exhibit 53 as instructing Ms. Felker to do a transfer

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1 of money?

2 A. Is there more than one page to this?

3 Q. I'm just asking if you can identify the e-mail?

4 A. I can identify this.

5 Q. All right.

6 MR. PILCHAK: Move to admit proposed Exhibit 53.

7 MR. FARRAR: Same objection. Relevance and
8 repetition.

9 THE COURT: Sustained.

10 BY MR. PILCHAK:

11 Q. Turn to proposed Exhibit 61. Would you identify proposed
12 Exhibit 61 as an e-mail to Barbara Webster?

13 A. Yes.

14 Q. And do you agree that the subject matter is directing her
15 to appear at the Brighton office in September 2011.

16 A. This was her reminder from Erica and I that we needed her
17 to fill in for Erica.

18 Q. And did you sign it -- strike that.

19 MR. PILCHAK: Move to admit proposed Exhibit 61.

20 MR. FARRAR: Your Honor, we've raised the same
21 objections.

22 THE COURT: This will be received. It's slightly
23 different.

24 (Defense Exhibit No. D-61 Admitted
25 Into Evidence)

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1 MR. PILCHAK: I have no further questions.

2 THE COURT: Okay.

3 MR. FARRAR: I was starting to worry I wasn't going
4 to get a chance to get back up here.

5 THE COURT: Mr. Farrar, redirect.

6 MR. FARRAR: Thank you, your Honor.

7 REDIRECT EXAMINATION

8 BY MR. FARRAR:

9 Q. All right. Good morning, Ms. Duffie.

10 A. Good morning.

11 Q. And as you saw, Mr. Pilchak showed you a bunch of
12 exhibits. And I certainly don't intend to go through all of
13 those. But I do have a few questions I just want to clear up
14 for you.

15 A. Okay.

16 Q. I guess just to be clear, at any point while you were
17 working at RE/MAX Platinum, were you anyone's supervisor?

18 A. No.

19 Q. Did you have any even authority to delegate any work?

20 A. No.

21 Q. I want to show you what's already in evidence as Defense
22 Exhibit 7. There's a copy of your resumé. You've been asked a
23 lot of questions about it already. And again, Ms. Duffie, let
24 me just begin, why did you prepare this resumé?

25 A. To try to find a better job.

1 Q. Last week when you were testifying, you mentioned a lot of
2 your duties while you were in Central at RE/MAX Platinum. Why
3 didn't you write on your resumé that you print the e-mails for
4 Mr. DeKroub?

5 A. I don't really know of anybody that would put their day to
6 day details of what they do on their resumé.

7 Q. Well, okay. But why didn't you write that you enter names
8 and addresses of real estate agents?

9 A. I was trying to gloss up my resumé in order to find a
10 better job. And data entry wasn't really what I wanted to
11 highlight.

12 Q. And when I'm looking through your resumé, I don't see any
13 reference to booking travel arrangements or RSVP'ing on behalf
14 of the owner and his wife?

15 A. No. Same reasoning.

16 Q. Okay. Now, in fact, looking at your resumé during this
17 entire period when you were at RE/MAX Platinum, there's no
18 mention that I see of any promotion. Am I missing something?

19 A. No. It stayed the same from 2008 until 2014 when I left.

20 Q. What stayed the same?

21 A. My job responsibilities were -- I didn't have a promotion.
22 I didn't receive a raise, so.

23 Q. Now, you were shown some documents where you signed your
24 name as controller?

25 A. Yes.

1 Q. Do you remember that?

2 A. Yes.

3 Q. And you were shown other documents where you signed as
4 administrative manager?

5 A. Yes.

6 Q. Why did you use those titles?

7 A. The controller was on federal documents and I was shown
8 that I had to do that that way. I assumed it had to be a title
9 of that sort in order to sign that document.

10 Q. So is it your testimony nobody gave you the title
11 controller?

12 A. No.

13 Q. Did anyone give you the title administrative manager?

14 A. No. I loaded that in my Gmail so that when I was doing
15 inquiries for Joe DeKroub I would be able to obtain information
16 that he needed.

17 Q. Did anyone ever give you any other title other than
18 bookkeeper?

19 A. No.

20 Q. And just to be clear, when you were using those other
21 titles from time to time -- administrative manager,
22 controller -- there was no promotion associated with that,
23 right?

24 A. No.

25 Q. And no raise?

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1 A. No.

2 Q. Okay. Now, Mr. Pilchak also asked you about -- this is
3 going back to Thursday -- about some classes you took after
4 high school. Do you remember that?

5 A. Yes.

6 Q. Did you get any college credit for any of those classes?

7 A. No.

8 Q. What about a diploma, did you get a diploma?

9 A. No.

10 Q. Did you even get a transcript for those classes?

11 A. No, no. They were basically seminars. And one was a
12 class on measuring and molding of plastic.

13 Q. And just to be clear, there was no college degree or
14 anything like that?

15 A. No.

16 Q. Now, you also testified on Thursday, I believe, that
17 before going to RE/MAX, you were a vice president or general
18 manager in your parent's business, right?

19 A. Yes.

20 Q. I don't -- unless I missed that I don't believe Mr.
21 Pilchak asked you how much you were making in that job. So let
22 me ask you now. How much were you making as general manager or
23 vice president of your parent's business?

24 A. Between 20- and 30,000, I believe.

25 Q. And that's per year?

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1 A. Right.

2 Q. And when you started at RE/MAX going back to 1998, how
3 much were you making?

4 A. I started somewhere between \$12 and \$14 per hour.

5 Q. While we're on the topic of your parent's business, I
6 believe you were asked about some of the work you did after
7 high school for that business.

8 A. Right.

9 Q. And you were asked about your familiarity with some
10 regulations. Do you recall that line of questioning?

11 A. Yes.

12 Q. And I believe you were asked if you were familiar with
13 things like OSHA and the Fair Labor Standards Act, right?

14 A. Yes.

15 Q. Now, what did you mean when you said you were familiar
16 with those?

17 A. Well, I made sure I hung the OSHA poster in the lunchroom.
18 And I think there was a minimum wage type poster, too, that you
19 were required to have for your employees to see.

20 Q. So other than hanging posters, what really was your --
21 like what did you actually do regarding the enforcement of
22 those regulations?

23 A. Made sure the current posters were hung.

24 Q. Okay. Now, Mr. Pilchak also used some real estate terms
25 when he was cross-examining you last week. Do you remember the

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1 word escheat?

2 A. Yes.

3 Q. I think it was even written up at one point.

4 A. Yes.

5 Q. How did you learn that word?

6 A. Well, the very first time I learned that word was when my
7 mother passed away. Apparently she had some money from I think
8 overpayment on a car insurance policy or something. That was
9 the first time. But then it was a term known in the real
10 estate -- you know, in real estate when you had money for a
11 certain period of time in an account.

12 Q. You were also asked a lot of questions about an audit?

13 A. Yes.

14 Q. While you were at RE/MAX Platinum --

15 A. Yes.

16 Q. So from I guess from 2008 up until the time of your
17 separation in 2014, how many audits were you involved in?

18 A. One.

19 Q. One time?

20 A. One time.

21 Q. Okay. So when you mentioned it on your resumé, what
22 exactly did you do regarding that one audit?

23 A. I provided the state auditor with check stubs and
24 paperwork, you know, as she requested it.

25 Q. Anything else? Or was that the extent of your

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1 involvement?

2 A. That was pretty much it.

3 Q. There was some testimony also about Kandis Thompson.

4 A. Okay.

5 Q. Do you know who she is?

6 A. Yes.

7 Q. And did there -- by the way, who told you in 2009 that
8 you'd no longer be getting paid any overtime?

9 A. Kandis Thompson.

10 Q. And did there come a time when Ms. Thompson left the
11 company to go to another company?

12 A. Yes. That was in 2011.

13 Q. And when she left in 2011, did you take over some of her
14 responsibilities?

15 A. Yes.

16 Q. Did you take over all of her responsibilities?

17 A. No.

18 Q. And Ms. Duffie, I'm sorry if I sound like a broken record.
19 But when you took over some of her responsibilities, did you
20 get any kind of promotion?

21 A. No.

22 Q. Did you get a raise?

23 A. No.

24 Q. Did you get a new title?

25 A. No.

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1 Q. And when you took over some of her responsibilities in
2 2011, how much -- do you know how much she was making?

3 A. How much Kandis was making?

4 Q. Yes.

5 A. 67,5 I think.

6 Q. So that would be \$67,500?

7 A. Yes. I believe so.

8 Q. And how much were you making?

9 A. 52,000.

10 Q. And did that ever change?

11 A. No.

12 Q. You were shown a copy of your complaint last week. And in
13 it you wrote you were the administrator for three branch
14 offices. Do you remember that?

15 A. Yes.

16 Q. In the complaint itself?

17 A. Yes.

18 Q. What does that actually mean when you say I was
19 administrator for three branch offices?

20 A. I did all of the accounts payable and the agent billing
21 and payroll.

22 Q. Turning your attention to Exhibit 62 already in evidence.
23 And I'm going to try to go through these quickly. Do you
24 remember this e-mail?

25 A. Yes.

1 Q. Okay. Why did you send this e-mail?

2 A. We had an issue -- oh. An error was made on a deposit in
3 2012 and I had already closed the year out. So I went to
4 Jennie Steudle and we contacted Chet Hill and he asked that I
5 copy him in and send an e-mail directed to Debbie explaining
6 what it had caused, what the problem had become.

7 Q. Ms. Duffie, were you Ms. Webber's boss?

8 A. No, Chet was.

9 Q. Were you ever her boss?

10 A. No.

11 Q. In fact, did you even work in the same office as her?

12 A. No.

13 Q. And do you see her boss copied on that e-mail?

14 A. Yes.

15 Q. Thank you.

16 THE COURT: Mr. Farrar, when you identify an Exhibit,
17 if you could say D-62. You both used numbers instead of one
18 using numbers and the other letters. So just want the --

19 MR. FARRAR: Just for the record, this was D-62.

20 THE COURT: Okay. Thank you.

21 BY MR. FARRAR:

22 Q. Now, Ms. Duffie, Mr. Pilchak also asked you about some
23 procedure -- there was almost an accident. These are the
24 hazards of doing trials, I guess.

25 THE COURT: Lawyering is very dangerous.

1 BY MR. FARRAR:

2 Q. You were asked about some procedures for depositing checks
3 after closings. Do you remember that?

4 A. Yes.

5 Q. Now, who created those procedures?

6 A. Who created the procedures?

7 Q. Do you know who created the procedures?

8 A. No. They were in place prior to the merge.

9 Q. Did you create them?

10 A. No.

11 Q. What exactly did you do with respect to any of these
12 procedures?

13 A. I just, I changed how we deposited the checks for the
14 satellite offices.

15 Q. I'm showing the witness, and I'm watching my step while I
16 do it.

17 THE COURT: Thank you.

18 THE WITNESS: Yes. Do.

19 BY MR. FARRAR:

20 Q. D-37 already in evidence. Now you were asked a lot of
21 questions about this, Ms. Duffie.

22 A. Um-hum.

23 Q. With respect to this document, what exactly were you --
24 what exactly did you do here?

25 A. I was adjusting for -- we couldn't do our ATM deposits

1 anymore. So we had a separate account. And I was adjusting
2 how the checks were deposited because the bank posted them
3 different than the other way we were doing it.

4 Q. And so I want to be clear, is it your testimony you
5 weren't actually creating any of these procedures?

6 A. No. This was the regular procedures, but we had to adjust
7 for the banks posting dates.

8 Q. Thank you. You were also shown an eviction notice. Do
9 you remember that?

10 A. Yes.

11 Q. Now, I won't put it up on the screen. But was that about
12 regarding D & D, one of Mr. DeKroub's companies?

13 A. Yes. Those would only be for D & D.

14 Q. And who made the decision to evict tenants?

15 A. Ultimately Joe DeKroub. Dave Vowell would normally start
16 that process and discussion with Joe.

17 Q. And who is Dave Vowell?

18 A. He's the manager of D & D Real Estate.

19 Q. So just to be clear, you had nothing to do with any
20 decision to evict people, right?

21 A. No. After they would meet, then I would be instructed as
22 to do what -- what to do next with them, which was the 7-day to
23 quit.

24 Q. And is it your testimony you were basically just sending
25 out the letters on behalf of them?

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1 A. Yes.

2 Q. And I believe on that letter you signed your name as
3 agent. Do you recall that?

4 A. Right.

5 Q. Why did you write agent on that eviction letter?

6 A. That's the way I was taught to do those when Kandis taught
7 me in 2011.

8 Q. You were also asked questions about interviewing and
9 hiring and that type of stuff. Do you recall that?

10 A. Yes.

11 Q. Just to be clear, did you ever -- did you ever make a
12 decision alone to hire anybody?

13 A. No.

14 Q. Who made that decision?

15 A. Joe. Joe or the managers if it was in another office.
16 But Joe.

17 Q. And you were shown -- and I'm referring to D-28 -- just
18 one moment. And for the record, I'm showing the witness the
19 entire paragraph of this e-mail. July 12th, 2013 was anyone in
20 your office when you sent this e-mail?

21 A. Yes. Joe.

22 Q. Thank you. And you were shown, Ms. Duffie, on -- just a
23 moment ago you were shown a lot of resumés?

24 A. Yes.

25 Q. I want to draw your attention to one of them. And this is

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1 particularly D-31 page 75. Do you recall this?

2 A. Yes.

3 Q. What's the position that this resumé is regarding?

4 A. This was for the bookkeeper position.

5 Q. And I'll draw your attention to the date right there. Did
6 you write that date up there?

7 A. Yes.

8 Q. And how long was that before you stopped working at the
9 company?

10 A. A week.

11 Q. Thank you. And all those -- one moment.

12 THE COURT: Okay.

13 MR. FARRAR: Your Honor, if I may have one moment to
14 look over my notes here.

15 THE COURT: Please.

16 BY MR. FARRAR:

17 Q. And that resumé I just showed you for the bookkeeper
18 position.

19 A. Yes.

20 Q. About a week before you left, that could have been -- is
21 it possible that was for your replacement?

22 MR. PILCHAK: Objection.

23 THE COURT: Sustained. She's already testified that
24 she created it to get a new job.

25 MR. PILCHAK: To replace --

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1 THE COURT: Oh, I'm sorry. I thought you were
2 talking about Defense Exhibit 7. Which resumé?

3 MR. FARRAR: One of the resumé's that was for a
4 bookkeeper position. It was just up there and she was asking
5 about it.

6 MR. DARE: 31.

7 MR. PILCHAK: She testified it was for a replacement
8 for Kruczynski.

9 MR. FARRAR: I don't believe that was her testimony.

10 THE COURT: Okay. Well, why don't you ask --

11 MR. FARRAR: You know, I'll withdraw it. It's
12 probably confusing. I'll withdraw it.

13 THE COURT: Thank you.

14 BY MR. FARRAR:

15 Q. I want to draw your attention, as we kind of wrap up here,
16 to D-11.

17 MR. FARRAR: Just give me one moment, your Honor.

18 THE COURT: Okay.

19 BY MR. FARRAR:

20 Q. These are D-11 that were entered. Specifically page 13.
21 This was introduced into evidence last week during cross. Ms.
22 Duffie, this is your pay stub, right?

23 MR. PILCHAK: Objection. Beyond the scope.

24 THE COURT: Overruled.

25 MR. FARRAR: I would note this was introduced during

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1 cross.

2 THE COURT: It's already overruled.

3 MR. FARRAR: Thank you.

4 BY MR. FARRAR:

5 Q. And Ms. Duffie, tell me what is this -- can you tell by
6 looking at this how many hours you worked?

7 THE COURT: Let's get the time period just to be
8 clear.

9 MR. FARRAR: Thank you, your Honor.

10 BY MR. FARRAR:

11 Q. Ms. Duffie, do you see the -- can you tell the time period
12 that this pay stub is from?

13 A. October 31 to November, I think, 13th, 2008.

14 Q. Can you tell by looking at this pay stub how many hours
15 you worked?

16 A. No. Because the additional hours are in the other taxable
17 portion.

18 Q. And can you tell me, what do you mean they were in the
19 other taxable?

20 A. Well, it shows 80 hours. And then there's an additional
21 \$337.50 in other taxable, so.

22 Q. Okay. What about this document here? And this is page
23 14. And it appears to be the pay period immediately preceding
24 the one I just showed you. How about here, can you tell how
25 many hours you worked?

1 A. No. Because the additional hours are in other taxable.
2 There's no hours listed.

3 Q. What about this one here? This is the pay period from
4 November 14th to November 27th, 2008.

5 A. That would be the same. It doesn't show the amount of
6 hours in the other taxable. We'd have to calculate it out at
7 25 an hour.

8 Q. What about this one year, 11/28/2008 to December 11th,
9 2008?

10 A. Yeah. Same thing. There's an additional 125. Which that
11 one would be easy, five extra hours. So that would have been
12 85 hours.

13 Q. Why are your hours that you worked overtime shown in this
14 other taxable column?

15 MR. PILCHAK: Objection. Calls for speculation.

16 THE COURT: If you know.

17 THE WITNESS: I know that they put that in the other
18 taxable so that it didn't show 85 hours as opposed to 80.

19 BY MR. FARRAR:

20 Q. And why do you believe that happened?

21 A. Because --

22 MR. PILCHAK: Objection. Speculation.

23 THE COURT: Sustained. If you can lay a foundation,
24 you can proceed to try to lay a foundation.

25 MR. FARRAR: Thank you, your Honor. Your Honor, may

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1 I just have one moment to confer with co-counsel here?

2 THE COURT: Yes.

3 BY MR. FARRAR:

4 Q. Ms. Duffie, going back to Exhibit, Defendant's 11 and I'll
5 put up I guess page 16 just so we have something up here. I
6 can actually say page 14. That's the pay period from 10-17 to
7 10-30.

8 When you see how you were paid in this pay period,
9 that other taxable amount, was that your overtime rate or
10 straight time?

11 A. It would be straight time.

12 Q. And what do you mean by straight time?

13 A. My \$25 per hour rate.

14 Q. So I want to make sure I'm understanding you. It's your
15 testimony that when they were paying you in this other taxable.

16 A. Yes.

17 Q. You were or were not getting paid your time and a half
18 rate?

19 A. No. That was straight time. The first time that my
20 paycheck appeared that way, I believe I asked Kandis.

21 Q. So do you know why then that you were paid other taxable
22 instead of your time and a half rate?

23 A. Why I wasn't paid the time and a half rate?

24 Q. Yes.

25 A. I don't know.

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1 Q. And you can confirm that you were paid --

2 A. Straight, yes.

3 Q. Thank you. And turning your attention to D-14 already in
4 evidence, this is a timesheet, right?

5 A. Yes.

6 Q. And looking at this timesheet, can you tell how many hours
7 you worked over 80 during that pay period?

8 A. Yes. That was 8. That would have been when I was still
9 in Ann Arbor.

10 Q. So this was before you went to Central?

11 A. Right.

12 Q. Now, I believe you testified on Thursday that from March
13 2011 until March -- well, from roughly October 2011 until March
14 2014, you averaged about 15 hours a week in overtime.

15 A. Right.

16 Q. Was that your testimony?

17 A. Um-hum.

18 Q. Here it looks like that amount is less than 15. Can you
19 explain that?

20 A. Well, it was in March. It was still the slow time of
21 year, for one thing. And like I said, I was in Ann Arbor the
22 bulk of the time. So it would have been less then.

23 Q. So just so I'm clear, when you say it was March, what do
24 you mean by that?

25 A. Well, the real estate market really doesn't pick up until

1 like April or May. So during the winter months, it's much
2 slower.

3 Q. And the -- is it your testimony then that the 15 hours a
4 week is an average throughout the whole year?

5 A. Right. Yeah. If you average the year, yes.

6 Q. So does that mean there were some months and weeks when
7 you were making less than -- when you were working less than 15
8 hours?

9 A. And some that I was working definitely more, yes. It just
10 depended on the time of year.

11 Q. And this was before you went to -- this timesheet was
12 before you went to Central, right?

13 A. Correct.

14 Q. Can you describe how your hours changed, if at all, once
15 you went to Central?

16 A. I was working a lot more hours when I was in Brighton
17 because I had taken on 11 more entities to do the bookkeeping
18 for, so. Plus Brighton was the main office. So even as far as
19 real estate closings, you know, in the busy part of the season,
20 you know, we could have 20 do 25 closings in a day everyday
21 for, you know, weeks through the busy period. So yeah it was a
22 lot more additional work.

23 MR. FARRAR: Your Honor, no further questions.

24 THE COURT: Okay.

25 MR. PILCHAK: Just a couple.

1 THE COURT: Go right ahead. Now's the perfect time
2 for that.

3 RECROSS-EXAMINATION

4 BY MR. PILCHAK:

5 Q. Ms. Duffie, you worked more hours once you went back to
6 Central because you took on additional duties?

7 A. That was part of it. But there was obviously more
8 activity in the Brighton office than there would have been in
9 Ann Arbor.

10 Q. And as you testified, you assumed all of Kandis Thompson's
11 duties that you knew her to perform?

12 MR. FARRAR: Objection. That was not the testimony.

13 MR. PILCHAK: You testified to that --

14 THE COURT: I did not hear that testimony. So ask it
15 -- start over with that question about what she did and what
16 she didn't.

17 BY MR. PILCHAK:

18 Q. Ms. Duffie, maybe -- you testified that you took over all
19 of the -- all of Kandis' duties that you knew her to perform,
20 did you not?

21 A. The ones that I was aware of.

22 Q. Right.

23 A. There were a lot that I was not aware of at the time.

24 Q. So when you came back to Central, you worked more hours
25 because you were performing Kandis' duties, correct?

1 A. No. Because I was taking on additional entities. And
2 there was more activity in Brighton than there was in Ann
3 Arbor.

4 Q. I'm a little confused because I thought you testified
5 previously that on average you worked 15 hours per week. Now
6 you're telling us that you didn't work -- or 15 hours of
7 overtime per week. Now you're telling us you didn't work 15
8 hours of overtime --

9 A. I didn't say that.

10 Q. -- during the winter months?

11 A. Not always.

12 Q. The timesheet that Mr. Farrar just showed you, that was
13 the last timesheet that you prepared, correct?

14 A. Right.

15 Q. And after that you started recording your hours in the
16 journal, right?

17 A. Yeah.

18 Q. You were collecting those resumés that we just looked at
19 in Exhibit 31 because you had told Jennie Steudle what you
20 thought about Valery's performance and the company was looking
21 for a replacement, correct?

22 A. They had told me that I needed to replace Valery.

23 Q. Can you answer the question?

24 A. I did. I did put the ad in Craigslist because they told
25 me I needed to get rid of her.

1 Q. And you placed the ad and all the resumés went to you?

2 A. Because I was the person that put the ad in Craigslist,
3 yes.

4 Q. Exhibit D-37, did I -- this is the banking procedures that
5 Mr. Farrar just put up on the screen.

6 A. Yes.

7 Q. Did I misunderstand your testimony to me on Thursday?
8 Didn't you write this and create this document?

9 A. Well, I wrote it, but I took it from the procedures that
10 were already in effect. The only thing we were changing is how
11 the bank processed our deposits.

12 Q. This was written to deal with the fact that they were not
13 -- that those banks in Flagstar were not taking your deposits,
14 correct?

15 MR. FARRAR: Objection. Asked and answered.

16 MR. PILCHAK: Well, she just said she didn't write
17 it.

18 THE COURT: Overruled.

19 MR. PILCHAK: I'm sorry.

20 THE COURT: Okay.

21 BY MR. PILCHAK:

22 Q. You wrote this because the banks no longer took the
23 deposits for 1st National, correct?

24 A. Well, they wouldn't take the ATM deposits for 1st
25 National. So Joe opened an account at Flagstar that they could

1 do a deposit to. And it changed because of the way that their
2 dates posted.

3 Q. When you say --

4 A. They were still going to the same bank. They're not
5 sticking it in the ATM.

6 Q. But this is -- this is dealing with a change in
7 circumstances. You wrote this because there had been a change
8 that you had to deal with, correct?

9 A. Well, yeah. They wouldn't take the deposits.

10 Q. Right.

11 A. So all we're changing is how we deposit them. We didn't
12 put them into the ATM. We walked into the bank and put them
13 into the account.

14 Q. You wrote and implemented a new process to deal with a
15 problem that came up while you were in Central, correct?

16 MR. FARRAR: Objection. Asked and answered.

17 THE COURT: Overruled.

18 THE WITNESS: I changed a deposit. I changed the
19 type of deposit.

20 BY MR. PILCHAK:

21 Q. And you reported to Kandis when you were in Ann Arbor,
22 correct?

23 A. Yes.

24 Q. But Webster, she didn't report to you?

25 A. No. Because when I was in Ann Arbor, there was not a

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1 manager down there. We had Joe down there.

2 MR. PILCHAK: Nothing further.

3 THE COURT: Any redirect?

4 MR. FARRAR: Very, very brief.

5 REDIRECT EXAMINATION

6 BY MR. FARRAR:

7 Q. Ms. Duffie, the hours that you testified to, the 15 hours
8 of overtime you worked per week.

9 A. Yes.

10 Q. Was that an average throughout the year?

11 A. That was an average. In the wintertime it could have been
12 four to five or whatever. And in the busy time it could be up
13 to 20, 25 hours.

14 MR. FARRAR: Nothing further.

15 THE COURT: Okay. All right. Nothing further, Mr.
16 Pilchak?

17 MR. PILCHAK: Nothing further, your Honor.

18 THE COURT: Okay. Then Ms. Duffie, you may step
19 down. Now, what I'd like to do is try to push on through
20 until one o'clock when I have another matter. I did ask
21 Felicia to let me know if everyone for the one o'clock is here
22 early, then she'll let us know and everyone can have lunch in
23 this case and we'll take care of it.

24 So is everyone okay to keep going? Just put your
25 hand up if you want a break right now. Need a break. Okay.

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1 All right. Does the plaintiff wish to call any further
2 witnesses?

3 MR. FARRAR: Yes, your Honor. And Ms. Gusfa was just
4 going outside to get our next witness.

5 THE COURT: Oh, fantastic. And who is your next
6 witness?

7 MR. FARRAR: One moment, your Honor. We would call
8 Al Wicke to the stand.

9 Thereupon,

10 **A L B E R T W I C K E ,**

11 having been called as a witness and having been first duly
12 sworn testified as follows:

13 THE COURT: Thank you. You can have a seat in the
14 witness box. And I don't know if there's any water in there.

15 THE WITNESS: No need.

16 THE COURT: If you're fully hydrated, then we'll just
17 get started.

18 DIRECT EXAMINATION

19 BY MR. FARRAR:

20 Q. Good afternoon, Mr. Wicke?

21 A. Good afternoon.

22 Q. I had to check my watch there. It was going off all
23 morning. Are you currently employed?

24 A. Yes.

25 Q. And where are you employed?

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1 A. Advanced Medical Solutions.

2 Q. Now, until today, you and I have never spoken about Ms.
3 Duffie or anything about the case; is that right?

4 A. Correct.

5 MADAM COURT REPORTER: Counsel, can you please have
6 the witness spell his name?

7 MR. FARRAR: Sure. Could you please spell your name
8 for the court reporter?

9 THE WITNESS: Last name?

10 MADAM COURT REPORTER: First and last.

11 THE WITNESS: Albert Carl Wicke. Last name is
12 W-I-C-K-E.

13 MADAM COURT REPORTER: Thank you.

14 BY MR. FARRAR:

15 Q. Thank you. And just can you tell the jury just briefly
16 what kind of work you're in?

17 A. Maintenance.

18 Q. And did there come a time when you worked for the
19 defendant RE/MAX Platinum?

20 A. Yes.

21 Q. And what period of time was that?

22 A. I believe summer of '08 to early '15.

23 Q. Okay. What kind of work did you do for RE/MAX Platinum?

24 A. Maintenance.

25 Q. And when you worked for RE/MAX Platinum, who did you

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1 report to?

2 A. Joe DeKroub. Jennie.

3 Q. And when you worked for RE/MAX, were you paid hourly or
4 salaried?

5 A. Hourly.

6 Q. Who set your rate of pay?

7 A. Joe DeKroub.

8 Q. Did anyone else set your rate of pay?

9 A. No.

10 Q. And how many hours a week did you work on average?

11 A. Forty.

12 Q. Did you ever work over 40 hours a week?

13 A. Yes.

14 Q. And when you did work over 40 hours a week, did the
15 defendant pay you overtime?

16 A. No.

17 Q. How did you get paid?

18 A. Straight time.

19 Q. What do you mean by straight time?

20 A. If I worked 45 hours, I got my wage at 45 hours.

21 Q. Are you familiar with something called comp time?

22 A. Yeah.

23 Q. And what's your understanding of how that works?

24 A. I took comp time through them. If I worked 50 hours, I
25 could take ten hours vacation, I guess you'd call it.

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1 Q. Were you also paid on comp time?

2 A. What do you mean by that?

3 Q. I'll rephrase that. And when you worked over 40 hours
4 instead of paying you for the 40 hours, sometimes did the
5 defendant make you make it up in vacation?

6 A. No, never made me.

7 Q. But did you choose to?

8 A. Yes.

9 Q. And while you were working for RE/MAX, did you come to
10 know the plaintiff, Sherry Duffie?

11 A. Yes.

12 Q. Just how did you get to know her?

13 A. When RE/MAX and Michigan Group merged.

14 Q. And did you ever see her while she was working?

15 A. Occasionally.

16 Q. And are you familiar with something called Central?

17 A. Yes.

18 Q. And just based on your observations, who was in charge of
19 Central?

20 A. Sherry.

21 Q. Okay. And what makes you think Sherry or say Sherry was
22 in charge of Central?

23 A. That's where everybody went when they had a question.

24 Q. Okay. Now, did you have occasion recently to speak to the
25 defendants' attorneys?

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1 A. Yes.

2 Q. In fact, did you speak with them last Thursday?

3 A. Tuesday or Thursday, yeah.

4 Q. Have you said previously that Jennie Steudle was the head
5 of Central?

6 A. Yeah. I mean, overlooked it, yeah. Sure.

7 Q. So just so we're clear now, would you say as you sit here
8 you'd say Jennie Steudle was, in fact, in charge of Central?

9 A. I'd say overlooking it, yeah. I mean, making sure it ran
10 good. But not a hundred percent of the time.

11 Q. Okay. And are you familiar with a few other people by the
12 name of Erica Hahn and Linn Felker?

13 A. Yeah.

14 Q. Do you know them? And based on your observations, who was
15 directing their work?

16 MR. DARE: Objection. Foundation.

17 THE COURT: What was the question?

18 MR. FARRAR: I asked him if he was familiar with some
19 other employees and I asked, based on his observations, who
20 was directing their work.

21 THE COURT: If you know. Do you know, Mr. Wicke, who
22 directed people's work?

23 THE WITNESS: No, not really. My work was directed
24 by a few different people.

25 THE COURT: Okay. Then the objection is sustained.

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1 MR. FARRAR: I'm sorry. Your Honor, I'd like to
2 refresh the witness' recollection. May I approach?

3 THE COURT: Yes. Tell us what you're going to show
4 him.

5 MR. FARRAR: I'm referring counsel and the Court to a
6 prior statement under oath from Mr. Wicke dated July 28th
7 2015. May I approach?

8 THE COURT: Yes, you may.

9 BY MR. FARRAR:

10 Q. Now, Mr. Wicke, I'll direct your attention to paragraph 11
11 of that statement. When you've had an opportunity to review
12 it, just let me know.

13 A. Sure.

14 Q. And does that refresh your recollection?

15 A. Yeah.

16 Q. And would you agree after reviewing it that, in fact, it
17 was Jennie Steudle who was in a supervisory role directing the
18 work of Linn Felker, Erica Hahn, and Valery Kruczynski?

19 A. Yeah. On the bigger end of it. I mean, like, she oversaw
20 everybody.

21 Q. Right.

22 A. But in that area, if I had a question about Central or
23 where Linn was or anything of that nature, I went to Sherry.

24 Q. But you would agree that Sherry, Ms. Duffie, was not
25 directing the work of Linn, Valery, and Erica?

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1 MR. PILCHAK: Objection.

2 MR. DARE: Objection. Leading.

3 MR. FARRAR: And who was --

4 THE COURT: Sustained. Please rephrase your
5 question.

6 BY MR. FARRAR:

7 Q. I would draw your attention back to paragraph 11 --

8 THE COURT: And tell us what it is he's looking at.
9 He's looking at a prior statement made under oath. What is
10 the date of the statement?

11 MR. FARRAR: Yes, your Honor. It's dated July 28th.

12 THE COURT: Of what year?

13 MR. FARRAR: 2015.

14 THE COURT: Okay.

15 BY MR. FARRAR:

16 Q. Let me know, again, when you've had an opportunity to
17 review it.

18 A. Okay.

19 Q. Now, Mr. Wicke, was Ms. Duffie directing Linn Felker,
20 Valery Kruczynski, or Erica Hahn based on your observations?

21 MR. DARE: Objection. Leading.

22 THE COURT: Overruled.

23 THE WITNESS: Occasionally. I'm sure they went to
24 her for direction.

25 BY MR. FARRAR:

1 Q. Now, I understand you spoke to the defendant's attorneys
2 recently --

3 THE COURT: Just so the jury -- there will be a jury
4 instruction that there's no -- nothing wrong, nothing
5 impermissible about lawyers talking with witnesses throughout
6 cases. But you'll have an instruction on that later.

7 BY MR. FARRAR:

8 Q. But Mr. Wicke, did you specifically state this in
9 paragraph 11, Sherry Duffie was not directing Felker,
10 Kruczynski, or Hahn? Was that your statement? Answer yes or
11 no?

12 A. In the words, no. But I signed it, so I'll --

13 Q. So you would agree with that statement that you signed,
14 right?

15 A. Yeah.

16 Q. And after speaking to the defendant's attorneys now, has
17 your testimony changed?

18 A. No.

19 Q. So then you would agree that Sherry Duffie was not
20 directing these other people's work, right?

21 A. Yeah.

22 Q. Thank you.

23 MR. FARRAR: I have nothing further for this witness.

24 THE COURT: Okay. Well, if you'll stay there, Mr.
25 Wicke, we may have Mr. Dare.

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1 MR. FARRAR: And your Honor, may I go retrieve the
2 statement from the witness?

3 THE COURT: Sure.

4 MR. FARRAR: Thank you.

5 THE WITNESS: You're very welcome.

6 CROSS-EXAMINATION

7 BY MR. DARE:

8 Q. Good afternoon, Mr. Wicke.

9 A. Good afternoon.

10 Q. Now, you -- is it correct that you'd performed work for
11 several of Mr. DeKroub's businesses?

12 A. That's correct.

13 Q. So can you tell me where physically you would perform this
14 sort of I think you referred to it as maintenance work?

15 A. Yeah. His home. RE/MAX Platinum in Brighton. RE/MAX
16 Platinum in Hartland. RE/MAX Platinum in Ann Arbor. And
17 RE/MAX Platinum in Fenton.

18 Q. Okay. So you would agree with me that on a given week you
19 could be performing, you know, work at one day at one of those
20 businesses, another day at another one of those businesses. So
21 you weren't in RE/MAX Platinum everyday?

22 A. Correct.

23 Q. So you were on the road quite a bit to all those different
24 sites?

25 A. Very much.

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1 Q. Okay. So then it's fair to say that you actually spent
2 most of your time away from RE/MAX Platinum performing the work
3 at all those different sites?

4 A. Yes.

5 Q. And you also were shown the statement that you had
6 provided. And according to that statement -- and you may look
7 at it again if you need to refresh your recollection.

8 THE COURT: I think Mr. Farrar just took it.

9 MR. DARE: Oh, if he needs it.

10 THE COURT: Okay.

11 BY MR. DARE:

12 Q. That you visited Central three times a week to submit
13 receipts for expenses? Do you remember that?

14 A. I tried to make it that much, yes.

15 Q. And so tell me how were -- for those purchases that you
16 were looking for reimbursements for, how were you making those
17 payments? Was it your own card, a company credit card?

18 A. Company credit card. Occasionally mine.

19 Q. Okay. And that was the RE/MAX Platinum company credit
20 card?

21 A. Yes.

22 Q. Okay. And who gave you that card?

23 A. I believe I got that card before Sherry was in that
24 position from Kandis Thompson.

25 Q. So then when you would go in, you'd go to RE/MAX to drop

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1 off these receipts looking for reimbursements?

2 A. Um-hum.

3 Q. How physically can you do it? Did you place them in a
4 bin? Did you put them in a folder on someone's desk? How did
5 you do it?

6 MR. FARRAR: Your Honor, beyond the scope of direct.

7 THE COURT: I think it goes -- I think it's a fair
8 question. I'll permit it.

9 THE WITNESS: In the beginning stages it was Erica
10 Hahn I took them to.

11 BY MR. DARE:

12 Q. Okay.

13 A. Then after Erica was moved to short sale, I gave them to
14 Linn Felker.

15 Q. Okay. But how would you do it? Would you hand it to
16 them? Would you place it in some sort of bin? How would you
17 --

18 A. No. I usually tried to hand it to them.

19 Q. So how long would that take you to hand it to them?

20 A. Couple of seconds.

21 Q. Okay. Couple of seconds. So your observations about
22 them, the dynamics between the individuals there in Central
23 that you've described, those were based on those few seconds
24 that you were then there in Central submitting those receipts?

25 A. Yes.

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1 Q. Okay. So nobody ever explained to you in addition to your
2 few seconds there, no one ever explained to you the management
3 structure or anything like that at Central?

4 A. No.

5 Q. So you have no reason to believe that you have a better
6 idea of who supervised Linn Felker than Linn herself; is that
7 right?

8 A. No --

9 MR. FARRAR: Objection. Asking what others would
10 agree to.

11 MR. DARE: I'm asking if he has any reason to
12 believe.

13 THE COURT: Overruled. And let's just see -- I think
14 we may have another witness here. And just for the jury, it's
15 standard in all cases that witnesses not sit through other
16 witness' testimony unless they're either the client or a
17 client representative.

18 So all those who have been here have the Court's
19 permission. But witnesses don't know that. And we've had
20 more than one occasion where they walk in, no one sees them
21 and they've set there for some period of time. But usually no
22 harm, no foul. Go ahead.

23 BY MR. DARE:

24 Q. Okay. So you'd already mentioned that you were paid for
25 your hours worked over 40, right?

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1 A. Correct.

2 Q. And you had no reason to believe that work performed for
3 different companies had to be combined for overtime pay; is
4 that right?

5 A. Correct.

6 Q. Okay. And you knew that at that time when you were there
7 that Ms. Duffie was in charge of payroll; is that right?

8 A. Correct.

9 Q. So from March 2011 or October 2011 to March 2014, Ms.
10 Duffie, who you knew to be in charge of payroll, did not pay
11 you time and a half for overtime; is that right?

12 A. Yes.

13 MR. FARRAR: Objection.

14 THE COURT: Sustained. She's processing payroll, Mr.
15 Dare. She's not paying payroll.

16 BY MR. DARE:

17 Q. So you'd also -- strike that. If you had a question about
18 something in Central, you would go to who? Would you go Sherry
19 Duffie?

20 A. On occasion, yes.

21 Q. Okay. Is it your understanding that at RE/MAX Platinum
22 that Jennie Steudle was in a higher position than Sherry
23 Duffie?

24 A. Yes.

25 Q. Okay. But it was your understanding that Sherry Duffie

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1 was the head of Central?

2 A. Tell you the truth, I don't know who's the head of what.

3 Q. Okay. Just one minute.

4 MR. DARE: Nothing further.

5 THE COURT: Okay.

6 MR. FARRAR: Very briefly.

7 THE COURT: Certainly.

8 REDIRECT EXAMINATION

9 BY MR. FARRAR:

10 Q. Mr. Wicke, at any time when you were working for the
11 defendant, did they pay you your time and a half?

12 A. No.

13 Q. And they never said you were salaried, right?

14 A. Correct.

15 Q. You were an hourly worker and the company never paid you
16 time and a half; is that correct?

17 A. Correct.

18 MR. FARRAR: Nothing further.

19 THE COURT: Well, Mr. Wicke -- oh, are we all done?

20 MR. PILCHAK: Oh, yes.

21 THE COURT: Mr. Wicke, thank you, very much for being
22 here. I understand you've been waiting a while. And we
23 really appreciate your patience. So you are released to
24 leave.

25 THE WITNESS: Thank you.

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1 MR. FARRAR: And we are getting our next witness,
2 your Honor.

3 THE COURT: Okay. And who is your next witness?

4 MS. GUSFA: Your Honor, our next witness is Mr. Ken
5 Durrant.

6 THE COURT: Okay. Mr. Durrant, would you step
7 forward --

8 MS. GUSFA: Durrant with a T.

9 THE COURT: Mr. Durrant. You can come forward a
10 little bit.

11 THE WITNESS: Oh, okay. Hi.

12 THE COURT: Please raise your hand.

13 Thereupon,

14 **K E N N E T H D U R R A N T ,**

15 having been called as a witness and having been first duly
16 sworn testified as follows:

17 THE COURT: Okay. Then the that's our witness box.
18 You can have a seat there.

19 DIRECT EXAMINATION

20 BY MS. GUSFA:

21 Q. Good afternoon, Mr. Durrant.

22 A. Hi.

23 Q. Where are you currently employed?

24 A. I work in Ann Arbor for a company call AmeriNet.

25 MADAM COURT REPORTER: Witness, can you spell your

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1 first and last name and also the company --

2 THE COURT: Every time you call a witness, what we're
3 going to ask you to do is say could you please state your name
4 and spell it.

5 THE WITNESS: K-E-N-N-E-T-H, D-U-R-R-A-N-T.

6 MADAM COURT REPORTER: And the company name you just
7 mentioned?

8 THE WITNESS: AmeriNet?

9 MADAM COURT REPORTER: Yes.

10 THE WITNESS: A-M-E-R-I-N-E-T.

11 MADAM COURT REPORTER: Thank you.

12 BY MS. GUSFA:

13 Q. So I believe you had just said you work for AmeriNet. And
14 what kind of work do you do there?

15 A. I'm a network services engineer. So I specialize in F5
16 Networks and networking. High end computer network equipment.

17 Q. And did you ever work for the defendant in this case,
18 RE/MAX Platinum?

19 A. I did.

20 Q. And when was that?

21 A. I started in 2009 and worked to 2015.

22 Q. And what kind of work did you do for the defendant?

23 A. I was a consultant hired by Mr. DeKroub. And basically my
24 role was to help everybody get past their technology hurdle.

25 Q. And when you worked at RE/MAX, were you familiar with

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1 something called Central?

2 A. I think Central was just because it was the largest
3 building in Brighton. And that's where the --

4 Q. Just to clarify, it's a building in Brighton or --

5 A. I would say so. The main staff was there, yes.

6 Q. And did you work in Central?

7 A. I did.

8 Q. And who was your supervisor when you worked in Central?

9 A. Kind of everybody. I really was an independent contractor
10 paid under Corvus, Inc., which is my company. And really
11 whether you are an agent or, you know, a manager, I helped with
12 your needs.

13 Q. So there's a -- is there a difference between people that
14 would ask for your help with a computer problem versus who
15 actually is your supervisor?

16 A. Basically I was just a go to person. I was a resource
17 that everybody utilized at RE/MAX.

18 Q. And who was your boss?

19 MR. PILCHAK: Objection.

20 THE WITNESS: Joe DeKroub.

21 MR. PILCHAK: Objection. Assume a fact not in
22 evidence. He said he was consultant billed through Corvus. I
23 don't know if he had a boss.

24 THE COURT: Okay. Sustained. Let's see if you can
25 establish.

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1 BY MS. GUSFA:

2 Q. Okay. Did you have a boss at RE/MAX Platinum?

3 A. I was kind of my own boss. I had a contract with Joe
4 DeKroub to work there, you know, as a resource.

5 Q. And who hired you?

6 A. Joe DeKroub.

7 Q. And is it -- so was Joe DeKroub your boss?

8 MR. PILCHAK: Objection. Calls for legal conclusion.

9 THE COURT: Yes. He has said he's an independent--
10 that he owns his own company. DeKroub contracted with him.
11 So sustained.

12 BY MS. GUSFA:

13 Q. Okay. All right. Do you know the plaintiff, Sherry
14 Duffie?

15 A. Yes.

16 Q. And how do you know her?

17 A. Through working with everybody at RE/MAX Platinum.

18 Q. And based on your knowledge, Ms. Duffie wasn't the head of
19 Central, was she?

20 MR. PILCHAK: Objection. Leading.

21 MS. GUSFA: I can rephrase the question.

22 MR. PILCHAK: Foundation also.

23 THE COURT: Please. Sustained.

24 BY MS. GUSFA:

25 Q. Okay. So you just said you know the plaintiff, Sherry

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1 Duffie. And based on your knowledge, was Ms. Duffie the head
2 of Central?

3 MR. PILCHAK: Objection. Foundation and leading.
4 Same question.

5 THE COURT: Sustained. Break it down. See what he
6 knows.

7 BY MS. GUSFA:

8 Q. Okay. So do you know the plaintiff Sherry Duffie?

9 A. Yes, I do.

10 Q. And how do you know her?

11 A. Through being a colleague working with her, yes.

12 Q. And where do you work with her or when you did work with
13 her, where was that?

14 A. Well, it started out she was in kind of the -- not
15 closing. But where they actually do the real estate deals.
16 And then there was a time when she was in Ann Arbor at our Ann
17 Arbor location as we opened that. And then she got pulled back
18 to Brighton where she was an accountant.

19 Q. So you were working with her at the Brighton office at
20 some point, yes?

21 A. Yes. And Ann Arbor. Because I would make visits. That
22 was part of my gig is to go out and make sure everybody was,
23 you know, moving forward.

24 Q. Okay. And were you working with her in Central?

25 A. Yes.

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1 Q. And based on your knowledge, was Ms. Duffie the head of
2 Central?

3 MR. PILCHAK: Same objection.

4 THE COURT: Do you have any knowledge of what Ms.
5 Duffie's job duties and roles were?

6 THE WITNESS: I think it was more or less accounting
7 and preparing financial statements. And you know, she was a
8 resource like anybody else.

9 THE COURT: And how do you know that?

10 THE WITNESS: Just from the interactions, the
11 questions, the -- you know, if somebody had a problem, they
12 could go to anybody and get it solved.

13 THE COURT: Okay.

14 BY MS. GUSFA:

15 Q. And who was in charge of Central?

16 A. In charge of -- ultimately, Joe DeKroub. It's his
17 business. He's in charge of everything, so.

18 MS. GUSFA: And no further questions.

19 THE COURT: Okay. I'm sorry.

20 MR. PILCHAK: I have a couple of questions.

21 THE COURT: This is the part where you get
22 cross-examined.

23 THE WITNESS: Getting hungry.

24 THE COURT: Yeah. I'm sorry you've been waiting. We
25 appreciate your patience.

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1 THE WITNESS: Oh, no problem.

2 CROSS-EXAMINATION

3 BY MR. PILCHAK:

4 Q. Good morning, Mr. Durrant.

5 A. Good morning.

6 Q. You tracked where Ms. Duffie had worked. You said she was
7 doing closings and she went to Ann Arbor and then she came back
8 to Brighton?

9 A. Correct.

10 Q. Do you recall that Kandis Thompson had worked in Central?

11 A. She did, yes.

12 Q. And do you recall that when Kandis Thompson left Central
13 and then Ms. Duffie came back from Brighton?

14 A. From Ann Arbor to Brighton, yes.

15 Q. I'm sorry.

16 A. Kandis was -- she got her mortgage license. So she was
17 selling mortgages.

18 Q. Right. And Kandis had been the head of Central?

19 A. She was like the same role, whether that's a controller or
20 bookkeeper or accountant. You know, same role.

21 Q. And you perceived that she and Ms. Duffie were in the same
22 role?

23 A. Correct.

24 MR. PILCHAK: I have no further questions.

25 MR. FARRAR: One moment, your Honor.

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1 MS. GUSFA: No further questions at this time.

2 THE COURT: Okay. Well, now you can step down and
3 have lunch. While the rest of us soldier on.

4 Does the plaintiff have any further witnesses?

5 MS. GUSFA: Just one more. I'm just going grab that
6 person.

7 THE COURT: Okay. Thank you, so much.

8 THE WITNESS: Thank you.

9 THE COURT: And Mr. Farrar, can you tell us who you
10 believe your next witness will be?

11 MR. FARRAR: I believe, assuming he hasn't
12 disappeared in the last few minutes, our last witness will be
13 Darin Ureche.

14 THE COURT: All right. Mr. Ureche, please step
15 forward. And stop right about there and raise your right
16 hand.

17 Thereupon,

18 **D A R I N U R E C H E ,**

19 having been called as a witness and having been first duly
20 sworn testified as follows:

21 THE COURT: Okay. Then have a seat in the witness
22 box.

23 MR. FARRAR: Your Honor, may I inquire?

24 THE COURT: Yes.

25 DIRECT EXAMINATION

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1 BY MR. FARRAR:

2 Q. Good afternoon, Mr. Ureche. Just for the court reporter,
3 will you please just state your name so she can have it, your
4 full name?

5 A. Okay. Darin Ureche.

6 THE COURT: And then would you spell it, please.

7 THE WITNESS: D-A-R-I-N, Last name Ureche,
8 U-R-E-C-H-E.

9 BY MR. FARRAR:

10 Q. And are you currently employed?

11 A. Yes.

12 Q. Where do you work?

13 A. Well, employed. I'm an independent contractor at RE/MAX
14 Platinum.

15 Q. And can you just describe a little bit for the jury what
16 you do for RE/MAX Platinum?

17 A. Residential real estate sales. So I'm out everyday
18 negotiating contracts, selling houses, working with buyers and
19 sellers.

20 Q. So just so I understand, so you're a real estate agent?

21 A. Yes.

22 Q. And how long have you been a real estate agent for RE/MAX
23 Platinum?

24 A. Well, let's see. It's easier to remember because it was
25 right around 2000. So 15, 16 years for RE/MAX.

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1 Q. And until today you and I have never spoken about your
2 employment or Ms. Duffie or anything like that, right?

3 A. No.

4 Q. While you were working for or with RE/MAX, did you come to
5 know Sherry Duffie?

6 A. Yes.

7 Q. And how did you come to know her?

8 A. She worked in I guess what we would call the main office
9 or whatever. When I had a closing, I would go to Sherry.
10 That's usually who would process my file and get a check.

11 There was changes through the company. But from the
12 time I was at the RE/MAX that we're at now, she pretty much was
13 the one I would go to get a check. There was others involved,
14 too.

15 Q. Sure. Of course. So you interacted with her while you
16 were working, right?

17 A. Yes.

18 Q. And while she was working as well, right?

19 A. Um-hum.

20 Q. Now, as a real estate agent, did you keep like normal
21 business hours?

22 A. No.

23 Q. Can you explain what you mean by that?

24 A. Well, I was a very productive agent. So you know, I
25 worked seven days a week, morning to night. So I worked lots

1 of hours.

2 Q. And were there times when you were in the office working
3 late at night?

4 A. I had a habit of coming in extremely early in the morning
5 to get a lot of stuff that was leftover cleaned up for the day.
6 And then I had appointments at night. So I was in and out of
7 the building and around RE/MAX from 5:00 AM sometimes to 8 or
8 nine o'clock at night.

9 Q. When you came into the office extremely early, as you
10 said, did you ever see Ms. Duffie there?

11 A. Oh, yeah. I would always see her car. When I'd pull into
12 the parking lot, I'd always see her maroon car sitting there
13 all by itself, so.

14 Q. And approximately what time was this?

15 A. You know, my time coming in was all over the map. But I
16 think hers was kind of consistent. I think there had been
17 times probably no earlier than maybe 6:00 AM. Between 6:00 and
18 7:00 AM, you know, I would see her car. If I came in at 5:00 I
19 wouldn't see anybody there. Usually if it was between 6:00 and
20 7:00, I would see her car.

21 Q. Were there many people other than Ms. Duffie working in
22 the office between 6:00 and 7:00 AM?

23 A. Not usually.

24 Q. And what about any weekends? Did you ever have occasion
25 to work weekends?

1 A. Um-hum. Same thing. You know, it was sporadic if I seen
2 her car there on the weekend. I mean, there could be a
3 Saturday it's, you know, it's not there. And then usually if I
4 seen her car I'd go, you know, joke with her and say hi. What
5 are you doing here on a Saturday, so.

6 Q. And do you recall times when that happened?

7 A. Quite a few. I couldn't give you dates because it was,
8 you know, random. You know, random Saturdays. Some Saturdays,
9 you know, I wouldn't see her car. And then some Saturdays I
10 would. So if you gave me an average, I don't know, maybe once
11 or twice a month. Maybe I missed her because I wasn't there or
12 something. I don't know.

13 Q. Sure. And in addition to early mornings, sometimes as an
14 agent did you have to be working late trying to close deals?

15 A. Um-hum.

16 Q. And on those late nights did you ever see Ms. Duffie
17 working?

18 A. That was probably less frequent. But yeah, I have seen
19 her there after hours. And again, probably joking with her
20 saying, you know, working late again or something, you know.

21 Q. And I know you can't recall any specific dates. I'm not
22 asking you to. But generally these interactions, would they
23 have occurred between like say October 2011 and sometime in
24 early 2014. I know that's a big window, but is that --

25 A. Yeah. There is -- so, yeah. When I went over to the new

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1 RE/MAX, was it 2010 or -- I think it was 2010. I don't know if
2 it was 2010. I thought it was 2010.

3 There was a short period there where her car wasn't
4 there because I think she was working at the Ann Arbor office
5 maybe. But that was only a brief time. But the whole stand,
6 it was consistent except for that period that she was at a
7 different office. I don't know what the dates are in there.

8 Q. Thank you, Mr. Ureche. I have no further questions.

9 THE COURT: Let's see if there's some
10 cross-examination.

11 MR. PILCHAK: Just one or two.

12 THE COURT: You have to stick around for questions
13 from the other side.

14 THE WITNESS: Okay. I'm ready to go.

15 THE COURT: Yeah. It's lunchtime.

16 CROSS-EXAMINATION

17 BY MR. PILCHAK:

18 Q. Mr. Ureche, you worked with Ms. Duffie back in the RE/MAX
19 All Stars and Home Stars days?

20 A. Yes.

21 Q. So you came into the organization at the time of the
22 merger?

23 A. Yes.

24 Q. And in the 15 years that you've known Ms. Duffie, have you
25 socialized with her outside of the work environment?

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1 A. No, never outside of the work environment.

2 Q. And I understand that -- are you a smoker?

3 A. No.

4 Q. Your wife's a smoker?

5 A. My wife is.

6 Q. And your wife and Ms. Duffie tend to take their smoke
7 breaks together?

8 A. Yeah, I think so.

9 Q. And isn't it fairly well known that you do a lot of -- pay
10 a lot of attention to the stockmarket?

11 A. Um-hum.

12 Q. That's yes?

13 A. I do, yes.

14 Q. And in fact, you spend blocks of time --

15 MR. FARRAR: Objection.

16 MR. PILCHAK: -- on it at a time?

17 MR. FARRAR: I just object to beyond the scope of
18 direct. I think the relevance.

19 THE COURT: The relevance. You can have latitude
20 with your cross. But relevance on this witness' stockmarket
21 activity.

22 BY MR. PILCHAK:

23 Q. But you spend time on it?

24 THE COURT: Well, no. I just -- I sustained the
25 objection.

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1 MR. PILCHAK: Can I make an offer?

2 THE COURT: After -- on our break you can proffer
3 what this witness would -- you'd like to proffer what he would
4 testify?

5 MS. GUSFA: Can we do a sidebar?

6 THE COURT: Let's have a sidebar.

7 (Side Bar Conference)

8 MR. PILCHAK: My understanding is that this witness
9 spends his time -- my understanding is that this witness
10 spends the mornings working on the symptom market and doesn't
11 arrive until 10 o'clock traditionally.

12 (Open Court)

13 THE COURT: I have to ask the jury, talking is fine,
14 but now we can't hear one another. Just a little softer.
15 Thank you.

16 (Side Bar Conference)

17 THE COURT: Just ask him -- let's just keep moving
18 through this case. Just ask him what time he shows up. He
19 already said --

20 MR. PILCHAK: I know he did. I can't understand it.
21 He's pretty well known for that.

22 THE COURT: Okay. Your response?

23 MR. FARRAR: He's already testified clearly what time
24 he gets in. Mr. Pilchak -- I don't see how this -- whether he
25 plays the stockmarket or not is relevant to this. He already

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1 gave his time.

2 THE COURT: And he could be playing stockmarket
3 activity at the office.

4 MR. PILCHAK: But Jennie Steudle said that he doesn't
5 get in until 10 o'clock because everybody knows that he's on
6 the stockmarket.

7 THE COURT: In your case and chief you can bring
8 Jennie Steudle. We'll discuss whether that's appropriate.
9 But so just ask him one more time what time he gets in and
10 then we'll go from there.

11 (Open Court)

12 BY MR. PILCHAK:

13 Q. Mr. Ureche, whether it's related to any of your personal
14 activities, do you know of anything that would account for the
15 perception that you typically arrive at the office on Monday
16 through Friday at 10 o'clock in the morning?

17 MR. FARRAR: Objection on foundation.

18 THE COURT: Yeah. Let's just ask him -- if you want
19 to do it from cross-examination -- isn't it true that you
20 actually arrive after 10 o'clock or around 10 o'clock.

21 BY MR. PILCHAK:

22 Q. Mr. Ureche, isn't it true that you spend time on personal
23 issues and generally arrive at the office about 10 o'clock each
24 day?

25 A. It's random. I like to go clean up all my paperwork in

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1 the morning and then it depends because real estate is so --
2 it's crazy. Because no two weeks are the same. But the
3 consistency is being in the office there and doing paperwork
4 and stuff.

5 And the stockmarket thing is on my phone. I do
6 trades and stuff actually walking through houses with clients
7 and they don't even know it because it's so fast on the phone.
8 So that has no bearing on anything really.

9 MR. PILCHAK: Okay. I have no further questions.

10 THE COURT: Okay.

11 MR. FARRAR: Nothing further, your Honor.

12 THE COURT: Okay. Well, now, you may step down. And
13 we appreciate the time you spent waiting to testify today.

14 THE WITNESS: So I can leave then?

15 THE COURT: Yes. You are released. You're out of
16 here.

17 THE WITNESS: Thanks.

18 THE COURT: Does the plaintiff have any further
19 witnesses?

20 MR. FARRAR: Your Honor, the plaintiff does not
21 intend to call any further witnesses. But before we rest,
22 there are a few issues to resolve. And we can do that now at
23 sidebar or whatever the Court would like.

24 THE COURT: Okay. Well, why don't we go ahead and --
25 you're ready with your next witness?

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1 MR. PILCHAK: We have witnesses.

2 THE COURT: Okay. I just am worried that if we take
3 a break now the jury would have like an hour and a half for
4 lunch or so because I have a one o'clock. But maybe that's
5 what we'll need to do.

6 So today will be a slightly longer lunch break. But
7 actually this hearing I have at 1:00 could be as short as a
8 half hour. So why don't we plan on a one hour lunch break.
9 And I'll do the best I can to keep things moving. And then
10 we'll conclude by four o'clock.

11 My case manager who can hear anything we're saying
12 says she thinks it could be as short as 15 minutes. So yeah,
13 this is a perfect time to take a break. So please rise for
14 the jury and plan to be back in about an hour. And remember,
15 you won't be talking to each other or anyone else about the
16 case.

17 (Jury Out)

18 THE COURT: All right. Please be seated.

19 MR. FARRAR: Your Honor, I guess before we rest,
20 there are just a couple of other exhibits that we wanted to
21 get into evidence. There was no objection to it in the order.
22 One is the answer. And we just wanted to --

23 THE COURT: The answer to the complaint?

24 MR. FARRAR: To the complaint. Which I believe both
25 parties listed as an Exhibit. And there may be one other

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1 document like that that, you know, we don't see a need to call
2 a witness specifically for getting it in. If both parties
3 agree that it's --

4 MR. PILCHAK: I'm not going to agree to the admission
5 of the answer without context.

6 THE COURT: Yeah. I think you'd need a witness to
7 admit it, an Exhibit, unless it's stipulated to.

8 MR. FARRAR: Since there was no objection to it, it's
9 my understanding then it was stipulated. There's not any kind
10 of objection.

11 THE COURT: Well, there may not be an objection. But
12 someone still has to say what this is and how it fits into the
13 case and why it's here. I mean, the jury may not understand
14 why it's here, but someone has to do that.

15 I mean, there's no objection as to authenticity, I
16 assume, because that was -- right. But there could be an
17 objection to relevance through a particular witness. There
18 could be an objection, some other objection, based on how it's
19 being used. And we don't know that because we don't know what
20 it's here for.

21 MR. FARRAR: Okay. We'll take that under advisement
22 then. Thank you.

23 THE COURT: Sure. All right. To Mr. Pilchak, you'll
24 be ready in an hour with your first witness?

25 MR. PILCHAK: Yes.

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1 THE COURT: Okay. So then plaintiff rests?

2 MR. FARRAR: I guess, your Honor, we'll just consider
3 that and decide whether we need to call another witness this
4 afternoon only for that purpose.

5 THE COURT: Sounds very good. Okay. Thank you. And
6 we will be in recess. So you are dismissed.

7 (Brief Recess)

8 THE COURT: Okay. And Mr. Farrar and Ms. Gusfa, does
9 the plaintiff rest at this point or do you have additional
10 witnesses?

11 MR. FARRAR: Your Honor, I guess do we wait for Mr.
12 Pilchak?

13 THE COURT: Oh.

14 MR. FARRAR: I think he's out.

15 THE COURT: Here he is.

16 MR. FARRAR: Before we rest, I wanted to be heard
17 again, if I may, on the issue of admitting the answer into
18 evidence.

19 THE COURT: Okay. What Exhibit number is it?

20 MS. GUSFA: It's P-12.

21 MR. FARRAR: And actually I believe the complaint --
22 for clarity I believe the complaint and answer were one
23 Exhibit on our list. And it seems as though only the
24 complaint has been admitted, unless I'm mistaken and they both
25 were.

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1 MR. PILCHAK: Oh, no. The complaint was not
2 admitted.

3 THE COURT: Right. The complaint was not offered as
4 an Exhibit as evidence in the case of anything other than
5 there were questions about allegations she brought that she
6 set forth in her complaint. But okay. So you want the answer
7 as evidence of what in particular?

8 MR. FARRAR: Well, it's admissions by the defendant.
9 And after thinking about the issue, doing a little more
10 research, I think it's our position that it's self
11 authenticating under Rule 901 and we would not need to call a
12 witness just to get this into evidence.

13 I mean, as a practical matter it's on their
14 defendant's list, too. There's no dispute as to what this
15 document is. It seems it would be, you know, unnecessary to
16 have us call a witness just to identify the answer and admit
17 it into evidence.

18 THE COURT: Hold on. There's something fundamental
19 that we're missing here though. But let me look at 901. I
20 have the worst evidence rule book that doesn't -- here we are.
21 Okay. Rule 901, authenticating or identifying evidence
22 doesn't suggest that without a stipulation you can just offer
23 something that's authentic. Show me -- tell me a little bit
24 more.

25 MR. FARRAR: I also think the fact that both sides

1 put it on their Exhibit list is essentially a stipulation. I
2 mean, there's no dispute as to what --

3 THE COURT: No, that's not a stipulation. We're not
4 going to go in that direction. Because a stipulation is an
5 actual agreement. And the fact that somebody has something on
6 an Exhibit list, you want to be exhaustively cautious with
7 your Exhibit list. Put everything under the sun that you
8 might use. And then for tactical and strategic reasons when
9 you're zealously representing your client you make a decision
10 as to whether something should or should not be offered as an
11 Exhibit that would help your side. And you do that through
12 witnesses.

13 MR. FARRAR: Your Honor, I'll read just 902.

14 THE COURT: Please do. Okay. We're on 902 now?

15 MR. FARRAR: The first sentence says the following
16 items of evidence are self-authenticating. They require no
17 extrinsic evidence of authenticity in order to be admitted.
18 And then section -- subsection 8 acknowledged documents we
19 believe, you know, pertains to this. And if it's
20 self-authenticating, I'm not sure what a witness would do
21 other than just establish that this is the answer.

22 And I may be wrong, but I'm not aware of any rule
23 that requires evidence to only come in through witnesses.

24 THE COURT: Okay. Well, Mr. Pilchak, what's your
25 response to 902 saying that self-authenticating items require

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1 no extrinsic evidence of authenticity in order to be admitted?

2 MR. PILCHAK: I didn't hear which section --

3 MR. FARRAR: Subsection 8.

4 MS. GUSFA: It's 902 the first part of that. And
5 then subsection 8 of 902.

6 MR. PILCHAK: Subsection 8 of 902?

7 MS. GUSFA: Yeah.

8 THE COURT: Let me find that as well. Okay. A
9 document accompanied by a certificate of acknowledgment that
10 is lawfully executed by a notary or another officer is such a
11 document.

12 MR. PILCHAK: Well, I don't know how that applies to
13 this case, but.

14 THE COURT: You're saying that the answer should be
15 admitted as an exhibit because it's an admission and it's
16 relevant to the jury's consideration. I mean, it's relevant
17 to the case in that it's the answer to the complaint, but they
18 don't know what an answer to a complaint is.

19 MS. GUSFA: Right. It would be used similar to how
20 Mr. Pilchak used Ms. Duffie's resumé in his opening. Even
21 though it didn't come into evidence quite yet through a
22 witness, it would be used in the same fashion, I suppose. And
23 also it is part of the record already technically.

24 THE COURT: So you're going to use it to
25 cross-examine Mr. Pilchak's witnesses?

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1 MS. GUSFA: Potentially possibly just as part of the
2 closing. The same way that Mr. Pilchak used exhibits that
3 weren't in evidence yet for the opening.

4 THE COURT: Well, no, of course. Nothing's in
5 evidence yet during opening. Nothing is in evidence. And so
6 it's not like that.

7 MS. GUSFA: Right.

8 THE COURT: Because that's what the trial is for.
9 That's where you get your evidence in and you explain to the
10 jury what its relevance is and how you're going to use it and
11 what it means with respect to a case. And then in closing,
12 you argue what you have shown through evidence. In opening,
13 it's what you will show.

14 MS. GUSFA: And I guess just the basic thrust of our
15 argument is that it is a self authenticating document as rule
16 902 says that the following items are self-authenticating and
17 they require no extrinsic evidence. So there would be no need
18 to introduce it through a witness in it doesn't require that
19 we do so, would be our position.

20 THE COURT: I'm going on LexisAdvance.com and I'm
21 going to do a quick search about admitting evidence without a
22 witness or a stipulation. Unless Mr. Pilchak, do you have
23 something else?

24 MR. PILCHAK: No, Your Honor.

25 THE COURT: Can you -- I want to understand what -- a

1 little bit what's at stake here just to figure out whether to
2 hold the jury up while we do this. What is the smoking gun
3 here in the answer?

4 MR. FARRAR: Well, I mean, your Honor, maybe no
5 smoking gun, but it is an admission. It's something that the
6 jury could consider when they are, you know, when they're
7 deciding this case. So I think it's relevant in that sense.
8 And you know, if we use it, I imagine it would only be in
9 reference to the closing argument: That's probably the extent
10 of it.

11 THE COURT: Is it the affirmative defenses?

12 MS. GUSFA: Yeah. It's just the affirmative defenses
13 that we would be using. And potentially --

14 MR. FARRAR: And potentially some of the other -- I
15 mean, it could really be any of the statements in either
16 admitting or denying facts.

17 MR. PILCHAK: Well, I would certainly suggest that it
18 contains a lot of extraneous matters as well. I mean, a lot
19 of things that would be likely confuse the jury.

20 MR. FARRAR: And if I may just add, it shouldn't be
21 admitted to the extent there is reference to the counts that
22 have been dismissed. We would have no objection to redacting
23 those portions. I'm sure we can come to an agreement about
24 that.

25 THE COURT: Well, I think -- hold on one second.

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1 MR. FARRAR: And your Honor, just if I may add --

2 THE COURT: Just one minute. I'm sorry. Here's
3 something about judicial -- just a minute. I'm going to tell
4 you it's not my business to try your case, but this would be
5 so totally confusing for a jury to -- this is your business
6 and your case. But you see things in the answer that just,
7 you know, relieve plaintiff to her proofs to neither admit nor
8 deny.

9 MS. GUSFA: We wouldn't be utilizing, you know,
10 language that they wouldn't understand. We wouldn't be
11 reading to them or showing them a portion that would be
12 completely confusing to them. It would be used in a slightly
13 different way.

14 MR. PILCHAK: Well, your Honor, in that regard, if
15 you're going to -- if they're asking you to admit the entire
16 document without foundation, if we proceed to the discussion
17 of relevance beyond where we are right now, I would argue that
18 as a document to that form it should be excluded under rule
19 403 because of the likelihood that it would confuse a jury.

20 The jury is not going to know anything about neither
21 admitting nor denying or estoppel that is mentioned, etcetera.

22 THE COURT: I'm reading a PowerPoint on how to admit
23 evidence without a witness. Nothing relates to an answer.
24 Obviously stipulations. There are judicial notices. There's
25 the use in summary judgment.

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1 MR. FARRAR: Your Honor, if I may just add, and this
2 is a little anecdotal, but --

3 THE COURT: Also note this, the PowerPoint says
4 rarely effective to prove factual disputes. What is it, sir,
5 Mr. Farrar?

6 MR. FARRAR: Well, I would just add I've seen, you
7 know, complaints and answers admitted in other federal
8 proceedings without a witness, even without a formal
9 stipulation, simply on the basis that neither side objected to
10 the authenticity of the document.

11 THE COURT: At trials you meant?

12 MR. FARRAR: At trials, yes. And it's often done
13 right before one party rests.

14 MR. PILCHAK: I guess my problem is without having a
15 witness on the stand that provided foundation and context for
16 a particular statement, just simply admitting five pages of
17 multiple statements is improper.

18 And second of all, that the risk of confusion for the
19 jury in distraction on issues outweighs any probative value,
20 which in my view would be minimal given the way that answers
21 are filed, in essence knowing very little about the
22 plaintiff's case.

23 MR. FARRAR: Your Honor, if I may just add to that, I
24 think it would be similar to at the beginning of the trial
25 when your Honor read the stipulated facts to the jury. They

1 didn't have any context in that moment for what any of that
2 meant. But they were, you know, I guess admissions by all
3 parties involved in the case, agreement.

4 And counsel's free to make reference to those
5 stipulations at closing or during questioning. I think it
6 would be the same as the answer.

7 THE COURT: All right. Well, I'm going to keep
8 looking. Okay. Here's something that says evidence without
9 witness. Okay. Here we are. We're on answers to
10 interrogatories and all these things and whether they can be
11 admitted.

12 You know, I'm going to deny your request without
13 prejudice to me revisiting it after our next break. And but
14 if you rest, we know that this is an open question. But the
15 reasons for denying it are many, which is that the traditional
16 method of admitting evidence at a trial is to have a witness
17 identify it, put it in context, and to draw out from that
18 document or that Exhibit something that could be useful to a
19 jury.

20 And just having the Court admit the answer to a
21 complaint which is signed by Mr. Russell and Mr. Pilchak,
22 which is I think 902(8) says something about having it
23 notarized , which is this is not. But let's just say this
24 seems like pretty legit. The two lawyers on the case at the
25 time sign it. But I think it could just only serve to confuse

1 everyone. This is just simply not something that a jury would
2 know what to do with.

3 So at this point I think it is -- I don't even know
4 that it's more prejudicial than probative. It's just simply
5 confusing. I don't know what rule that is. But it's just not
6 the way you try a case. You don't just list off some exhibits
7 that you're going to put in that have not been agreed upon.
8 So which this was not agreed upon as an Exhibit.

9 MR. PILCHAK: And it's the other part of rule 403, is
10 the risk of confusion. I mean, we usually cite that for
11 prejudicial effect. But the risk of confusion the jury is in
12 403.

13 THE COURT: Yeah, okay. Thank you. So at this
14 point, it is provisionally your request is denied. And I'll
15 revisit it when -- by the time we talk about the jury
16 instructions and all of that, I will have looked through some
17 more materials.

18 MR. FARRAR: Thank you, your Honor.

19 THE COURT: Were there other exhibits?

20 MR. FARRAR: No.

21 THE COURT: And let me just tell you, what you would
22 want to do for your next trial is put all your exhibits and
23 then put which counts they go to or what claims, defenses,
24 etcetera, that they're going to go to and who is your witness
25 you're going to get it in through. But this is just one. And

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1 so that's what we'll do with that.

2 MR. FARRAR: All right. In that case, the plaintiff
3 has no further witnesses with the -- just with the
4 understanding of what we just discussed. That should we
5 revisit this issue later, we are reserving our right to call
6 another witness for the limited purpose of the answer. Is
7 that --

8 THE COURT: Well, no. Your case is -- I mean, you
9 can't say we were counting on a particular ruling so we didn't
10 call a witness.

11 MR. FARRAR: Your Honor, in that --

12 THE COURT: What witness would you have -- who would
13 you call?

14 MR. FARRAR: I guess, your Honor, in that case we
15 could call the plaintiff again to authenticate the answer for
16 that limited purpose.

17 THE COURT: Well, the authentication -- okay. You
18 can call Mr. Russell. He signed it.

19 MR. FARRAR: Or we can call Mr. Russell as well. I
20 mean, he signed it. All we would ask is did you prepare this
21 and is this the answer to the complaint. And I think that
22 would satisfy any evidentiary issues.

23 MR. PILCHAK: He's not on the witness list and I
24 would object to him being called.

25 THE COURT: Yeah, and it's not rebuttal. Okay. What

1 we're going to do is you will rest with the understanding that
2 the Court will revisit this on a break and give it some more
3 thought and may yet admit it. But at this point, it will not
4 be admitted. And we will move on. I think you should rest in
5 front of the jury so that they hear that you rest.

6 MR. FARRAR: Thank you.

7 MS. GUSFA: Thank you.

8 THE COURT: We'll do that again. But Mr. Pilchak, do
9 you have something?

10 MR. PILCHAK: No.

11 THE COURT: Oh, okay. So we'll get water and the
12 jury.

13 MR. FARRAR: Thank you.

14 MS. GUSFA: Thank you.

15 THE COURT: Okay. Fantastic.

16 Mr. Farrar, I just don't see in these affirmative
17 defenses anything that hasn't in one way or another been
18 discussed by defense. I mean, if you want to make your
19 closing argument that defendant --

20 THE CASE MANAGER: All rise for the jury.

21 (Jury In)

22 THE COURT: Okay. Please be seated. And Mr. Farrar,
23 Ms. Gusfa, does the plaintiff rest at this point?

24 MR. FARRAR: Yes, your Honor. The plaintiff rests.

25 THE COURT: Okay. Thank you, very much. And what

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1 that means is that the plaintiff has been presenting her case
2 in chief. And now we move to the defendant bringing its
3 defenses on board. Although, of course, you've heard
4 cross-examination so I think you're quite familiar with the
5 case.

6 MR. PILCHAK: Defense will call Erica Hahn.

7 THE COURT: Okay. Fantastic.

8 Thereupon,

9 **E R I C A H A H N ,**

10 having been called as a witness and having been first duly
11 sworn testified as follows:

12 THE COURT: We have a witness box right over there.

13 DIRECT EXAMINATION

14 BY MR. PILCHAK:

15 Q. Would you state your full name for if record?

16 A. Erica Hahn.

17 Q. And are you presently --

18 THE COURT: And could you spell your full name?

19 THE WITNESS: E-R-I-C-A, H-A-H-N.

20 THE COURT: Thank you.

21 BY MR. PILCHAK:

22 Q. Where do you reside?

23 A. New Mexico.

24 Q. Are you presently employed?

25 A. No.

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1 Q. When were you last employed?

2 A. June of last year.

3 Q. June of 2015?

4 A. Yes.

5 Q. What took you to new Mexico?

6 A. My significant other, my boyfriend got a job out there so
7 we moved out there.

8 Q. And what was the nature of the job, if I might ask?

9 A. He is the event director for Albuquerque International
10 Balloon Fiesta.

11 Q. And how were you employed say before October of 2008? Do
12 you remember back that far?

13 A. I worked for RE/MAX. It was RE/MAX Platinum, RE/MAX All
14 Stars.

15 Q. Okay. And this was prior to the merger with The Michigan
16 Group?

17 A. Correct.

18 Q. You worked with who there?

19 A. I worked with Sherry Duffie and Will Steinmetz among other
20 agents and such.

21 Q. And that company had a trust account?

22 A. Yes.

23 Q. And then from October of 2008 did your employer change?

24 A. Yes. We merged with The Michigan Group and went over to
25 their building and became RE/MAX Platinum there.

1 Q. And where did you work within RE/MAX Platinum after the
2 merger?

3 A. Central office.

4 Q. And you've used the term Central. What would you -- how
5 would you describe Central?

6 A. Accounting department. Kind of the hub of the company.

7 Q. And from October of 2008 up until -- March of 2011, to
8 whom did you report?

9 A. Kandis Thompson.

10 Q. And after March of 2011 until approximately August of 2012
11 to whom did you report?

12 A. Sherry Duffie.

13 Q. And why do you say that you reported to Sherry Duffie?
14 How -- what was it about your experience that says you reported
15 to Sherry Duffie?

16 A. Well, when we first got over there and I worked in
17 Central, Kandis was the controller. And so she is who I
18 reported to. And then when she was leaving, Sherry took over
19 as the controller, so she was who I reported to.

20 Q. Okay. And who gave you day-to-day direction?

21 A. Sherry and Jennie and Joe.

22 Q. Okay. And who did you mostly deal with in terms of
23 day-to-day direction on things within Central?

24 A. Sherry.

25 Q. And drawing your attention to I believe admitted Exhibit

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1 50 in this binder. Let me just check my list. This is Exhibit

2 50. And could you identify this document?

3 A. It's an e-mail from Sherry to myself.

4 Q. Okay. And what was the nature of this?

5 A. Sending a letter to the state to petition a rent increase
6 for a rental unit.

7 Q. How often would you get an e-mail like this from Sherry
8 Duffie instructing you or directing you to engage in a
9 particular activity?

10 A. Well, we worked together on a daily basis. So I don't
11 know if I would get an e-mail daily, weekly, whatnot.

12 Q. How often would she provide direction like this whether
13 verbally or by e-mail to attend to certain duties?

14 A. Probably daily or so.

15 Q. Okay. Turn to Exhibit 27. Would Exhibit 27 be an example
16 of such an e-mail?

17 A. Yes.

18 Q. And what are the functions -- who else reported to Sherry
19 Duffie in your opinion?

20 A. I know Linn Felker did when I was back there.

21 Q. And how would you describe the reporting relationship
22 between say the Ann Arbor and Fenton offices in Central?

23 A. We would work together as well because we were, you know,
24 it was one company. So we were all kind of on the same page so
25 we would all work together.

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1 Q. Do you know if Ms. Duffie -- if you've seen anything occur
2 or heard Ms. Duffie say anything that caused you to believe
3 that she had any authority over the Ann Arbor or Fenton
4 offices?

5 A. Yeah.

6 Q. And what was that?

7 A. I know that she had authority especially over Ann Arbor.
8 She was in the Ann Arbor office doing sort of the Central
9 duties down there. So I know she was in charge of the people
10 in that office as well when she came back to Brighton.

11 Q. Okay. And are you saying she had authority over that
12 office after she came back to Brighton?

13 A. Yes.

14 Q. And are you aware of any activities in the nature of
15 hiring, firing, discipline or anything like that that she --

16 MR. FARRAR: Objection. Leading.

17 THE COURT: Could you rephrase the question?

18 BY MR. PILCHAK:

19 Q. Did you or did you not ever see anything, see her exert
20 any hiring, firing authorities as far as you know?

21 A. To my knowledge or to my understanding, yes.

22 Q. And what is your understanding?

23 A. It was my understanding that the people that were in Ann
24 Arbor especially because she was in that office she hired
25 someone to kind of take care of that office when she came back

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1 to Brighton. And I believe that that person was later fired by
2 her as well.

3 Q. Do you know that person's name?

4 A. I remember Barbara.

5 Q. Do you remember a last name at all?

6 A. I didn't know.

7 Q. That's fine. With regard to processes within Central,
8 were there or were there not any changes in processes after Ms.
9 Duffie came to Central after March of 2014 before you left the
10 department in August of 2012?

11 A. Yes.

12 Q. And who would initiate those changes in process?

13 A. Sherry did change some things in process. She worked
14 differently than Kandis did. So she was kind of changing
15 things.

16 Q. If you would turn to Exhibit 34. Can you tell what the
17 process is here?

18 A. Attaching a pending checklist that we would use with --
19 when a pending deal came in, the checklist would be done and
20 then the papers -- how the papers were, I guess, attached to
21 the file.

22 Q. Okay. And what other kind of processes do you recall
23 being in place in the office at Central, if you can?

24 A. I'm not quite sure.

25 Q. How was banking conducted?

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1 MR. FARRAR: Objection. Leading.

2 THE COURT: How was banking conducted? That's fine.
3 Overruled.

4 BY MR. PILCHAK:

5 Q. How was banking conducted? Do you know?

6 A. As far as like the accounting process?

7 Q. Let me ask you this, do you know how many banks or Central
8 or the company used?

9 A. I believe just one bank.

10 Q. Maybe this didn't occur during your employment. We won't
11 talk about it. Are you familiar with the term hit by a bus
12 manual?

13 A. Yes.

14 THE COURT: Hit by a --

15 MR. PILCHAK: Hit by a bus manual.

16 THE COURT: Oh.

17 BY MR. PILCHAK:

18 Q. And what is that?

19 A. It was kind of the book that or binder or book that
20 included everybody's job description. So if anybody was hit by
21 a bus and needed someone else to take over their job, they kind
22 of had an understanding of how their job was done.

23 Q. How were those manuals initiated?

24 A. Sherry asked everyone to prepare kind of a job
25 description, a job manual for what they did.

1 Q. Now, when we use the term job description, it sort of
2 means a listing of duties on one piece of paper with bullet
3 points, maybe like a resumé. Is that what this was or is it
4 something different?

5 A. More describing your day to day activity and how you do
6 everything.

7 Q. Okay. And what kind of things would you put in there?
8 How much pages would it end up consisting of?

9 A. It depended on what job you did and how thorough you wrote
10 them down, I guess.

11 Q. Okay. All right. And did you create one?

12 A. Yes.

13 Q. Would you look at -- well, let me ask you this. From time
14 to time, did Ms. Duffie ever raise any issues or engage in any
15 corrections of your work?

16 A. Yeah.

17 Q. And would you turn to Exhibit 49, proposed Exhibit 49.
18 How would you identify proposed Exhibit 49?

19 A. An e-mail from Sherry to myself asking --

20 Q. Don't read it into the record. But generally on what kind
21 of a subject?

22 A. Contracts.

23 Q. Okay.

24 MR. PILCHAK: Move to admit proposed Exhibit 49.

25 THE COURT: Is there any objection?

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1 MR. FARRAR: No, Your Honor.

2 THE COURT: Okay. It will be received.

3 (Defense Exhibit No. D-49 Admitted
4 Into Evidence)

5 MR. PILCHAK: And may I display it, your Honor?

6 THE COURT: Yes.

7 BY MR. PILCHAK:

8 Q. And the e-mail speaks about please change your home agent
9 contracts to reflect three percent broker fee. Do you know
10 what issue or event had occurred to require this e-mail?

11 A. I don't remember what event happened.

12 Q. But what is the direction? Did you maintain a database or
13 any kind of computer file with regard to broker agents
14 contracts?

15 A. Yes. It was part of the system on how the commission
16 checks were cut.

17 Q. Okay. And the nature of this relates to having three
18 percent broker fee and five percent broker fees, correct?

19 A. Correct.

20 Q. In what way would it come to Ms. Duffie's attention
21 something that you had worked on in this regard? Do you know?

22 MR. FARRAR: Objection.

23 THE COURT: The basis?

24 MR. FARRAR: In what ways it would come to Ms.
25 Duffie's attention. I think it's calling into her --

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1 THE COURT: Oh, Ms. Duffie's attention?

2 MR. FARRAR: Yes.

3 THE COURT: Ask how it came to her attention or
4 something she might know.

5 BY MR. PILCHAK:

6 Q. In terms of the processes that you knew were in place or
7 the activities that you knew Ms. Duffie to engage in, do you
8 have any understanding as to how something you had worked upon
9 would come to Ms. Duffie's attention?

10 A. If she was in the system double checking it.

11 Q. Okay. And in this case, did you make the correction that
12 she had requested, if you know?

13 A. I don't. I assume I did, but I don't remember.

14 Q. Okay. All right. Did there ever come a point in time
15 when your duties were changed or you were assigned different
16 duties between March of 2011 and August 2012 that you recall?

17 A. Yeah, duties were kind of shuffled around.

18 Q. And who would tell you which duties you were to attend to?

19 A. It would be Sherry or someone or Jennie or Joe.

20 Q. Okay. You were engaged in dealing with agent broker
21 contracts, correct?

22 A. Yes.

23 Q. And so to an extent your duties touched Ms. Steudle's
24 activities, correct?

25 A. Yes.

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1 Q. And so you would from time to time have to discuss matters
2 with Ms. Steudle, correct?

3 A. Yes.

4 Q. But in terms of who you considered your boss to be, who
5 did you consider your boss to be?

6 MR. FARRAR: Objection. Asked and answered.

7 THE COURT: He can ask it again. Overruled.

8 THE WITNESS: Sherry was my direct supervisor.

9 MR. PILCHAK: I have no further questions.

10 THE COURT: Okay. Do you have any cross-examination?

11 MR. FARRAR: Yes, your Honor.

12 THE COURT: All right.

13 CROSS-EXAMINATION

14 BY MR. FARRAR:

15 Q. Ms. Hahn, were you subpoenaed to be here today to testify?

16 A. Not subpoenaed.

17 Q. So no one ever served you with legal papers and said you
18 are ordered by law to come here today, right?

19 A. No.

20 Q. You're here because you want to be here, right?

21 A. Well, I'm here because I was asked to be here.

22 Q. You were asked. And you could have said no, right?

23 A. I suppose.

24 Q. But you said yes because you wanted to testify for the
25 corporation, right?

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1 A. I guess.

2 Q. Okay. Well, before today now, you and I have never
3 spoken, right?

4 A. Yes.

5 Q. But you have obviously spoken to the company's attorneys,
6 right?

7 A. Yes.

8 Q. You've spoken to the company's attorneys actually on a few
9 occasions; am I right?

10 A. A couple.

11 Q. Well, you talked to them -- when you spoke to them,
12 obviously you were talking about your testimony, right?

13 A. They were asking me questions.

14 Q. And you were giving them answers?

15 A. Um-hum.

16 Q. Now, you -- prior to today you signed an affidavit. Are
17 you aware of that?

18 A. I don't remember.

19 Q. Well, do you remember signing something about what you
20 claim you saw and observed when you were working at RE/MAX?

21 A. I guess. I remember signing something.

22 Q. And by the way, that document that you signed, you would
23 agree that your testimony today is consistent with that
24 document?

25 A. Um-hum.

1 Q. And that document that's consistent with your testimony
2 today, that was actually written up by the defendant's
3 attorneys, right?

4 A. I don't remember. I mean, I don't -- if I could see the
5 document I could probably tell you.

6 Q. Well, we'll get to that in a minute. But you didn't write
7 it, right?

8 A. I don't remember.

9 Q. Well, if you had written a document about this case, isn't
10 that something you would remember?

11 A. Maybe.

12 Q. So your testimony is you're not sure?

13 A. I would have to see the document to know.

14 Q. Okay. All right. One moment.

15 MR. FARRAR: Your Honor, may I approach the witness?

16 THE COURT: Yes.

17 MR. FARRAR: For the record, I'm showing the witness
18 what has been marked as D-86.

19 THE WITNESS: Okay.

20 BY MR. FARRAR:

21 Q. Now, Ms. Hahn, looking at that, does that refresh your
22 recollection as to whether or not you wrote it?

23 A. Yes.

24 Q. Okay. So did you write that?

25 A. I did not write it, but these are things that I said.

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1 Q. Okay. And it was written by the attorneys for the
2 defendant, right?

3 A. I don't know who wrote it.

4 Q. Well, it was given to you after speaking with the
5 defendant's attorneys, right?

6 A. Yes.

7 Q. And what's the date on that document?

8 A. July 13th, 2015.

9 Q. And prior to that you signed another one on April 29th,
10 2015, right?

11 A. I don't remember.

12 Q. Do you agree it's possible you signed one?

13 A. I agree it's possible.

14 Q. And on April 29th, 2015, you were still employed by the
15 defendant, right?

16 A. Yes.

17 Q. So you were given a document. You don't know who prepared
18 it. But it was after speaking with the defendant's attorney
19 while you were still employed by the defendant, right?

20 A. I suppose if I signed something in April, then yes.

21 Q. And it's your testimony that what you wrote on the
22 affidavit, that's the same as what you're saying in Court,
23 right?

24 MR. PILCHAK: Objection. Conclusory.

25 THE COURT: I'm not sure I heard the entire question.

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1 What was the question?

2 MR. FARRAR: I was just asking the witness if she's
3 testifying consistently today with what she'd sign.

4 THE COURT: That's a fair question. Overruled.

5 THE WITNESS: Yes.

6 BY MR. FARRAR:

7 Q. Okay. Now, Ms. Hahn, you're -- and I can -- if I may
8 approach, I can take that back. Thank you. Now, Ms. Hahn,
9 you're currently living in new Mexico; is that right?

10 A. Yes.

11 Q. So how did you get out here in Michigan?

12 A. I flew.

13 Q. And who paid for your flight?

14 A. RE/MAX did.

15 Q. Okay. Where are you staying while you're out here?

16 A. In a hotel.

17 Q. And who's paying for your hotel?

18 A. RE/MAX.

19 Q. And that's the same RE/MAX that's the defendant in this
20 case?

21 A. Yes.

22 Q. Ms. Hahn, are you familiar with something called the
23 RE/MAX vendors list?

24 A. Yes.

25 Q. And that's something you're responsible for updating,

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1 right?

2 A. When I was in Central office I did.

3 Q. And approximately what period of time are we talking about
4 here?

5 A. Prior to August 2012.

6 Q. And the vendor list, as I understand it, is a list of
7 approved vendors that RE/MAX uses; is that right?

8 A. The vendor list was kind of a compilation of vendors that
9 agents had used in the past. If they had any relationships
10 with them, then they could kind of suggest, hey, this is who I
11 used in the past.

12 Q. And obviously it's important to maintain that accurately.
13 Can we agree on that?

14 A. If there were changes to it and somebody let us know.

15 Q. And in addition to maintaining the vendors list, are you
16 familiar with a document called the who does what list?

17 A. Yes.

18 Q. And that's -- can you describe what that document is?

19 A. It was sort of an internal document that gave a
20 description of who handled what duties.

21 Q. And were you responsible for updating that?

22 A. Yes.

23 Q. And when you say it was an internal document, that was
24 something that was shared around the office?

25 A. If the agents had questions of who to go to, then that

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1 document kind of told a basis of who does what.

2 Q. So basically anyone in the company, if they needed to find
3 out someone's title, someone's job duties, they could look at
4 that; is that right?

5 A. Yeah.

6 Q. Okay.

7 MR. FARRAR: One moment, your Honor.

8 BY MR. FARRAR:

9 Q. And the document called the who does what list, you would
10 agree it was used in RE/MAX's regular course of business,
11 right?

12 A. Yeah.

13 MR. FARRAR: Your Honor, I'd like to show the witness
14 what's been premarked as Plaintiff's Exhibit 1.

15 MR. PILCHAK: Proposed.

16 MR. FARRAR: Plaintiff proposed Exhibit 1. Thank
17 you.

18 THE COURT: Okay. Let me take a look. Oh, Exhibit
19 1. I seem to have taken Exhibit 1 out. What is Exhibit 1?

20 MR. PILCHAK: We've had a lot of discussion --

21 THE COURT: Oh, that's our one -- oh, sure. You can
22 show it to her.

23 MR. FARRAR: Thank you, your Honor.

24 THE COURT: I've got it right here.

25 MR. FARRAR: May the record reflect I've handed the

1 witness what's been premarked as plaintiff's proposed Exhibit

2 1.

3 BY MR. FARRAR:

4 Q. Ms. Hahn, do you recognize that document?

5 A. Yes.

6 Q. And what do you recognize it to be?

7 A. The who does what list.

8 Q. And was this what you were responsible for updating during
9 the time you worked at Central?

10 A. Yes.

11 Q. And is what I've handed you a fair and accurate copy of
12 that document?

13 A. Yes.

14 MR. FARRAR: Your Honor, at this time, defendants --
15 plaintiff moves for it to be admitted into evidence.

16 MR. PILCHAK: Wish to voir dire.

17 THE COURT: Certainly. What that means, for the
18 jury, is that we're trying to sort out if this is an exhibit
19 that should be admitted. And Mr. Pilchak will ask a couple of
20 questions during Mr. Farrar's examination to find out more
21 about the document.

22 VOIR DIRE EXAMINATION

23 BY MR. PILCHAK:

24 Q. Do you have any understanding as to whether the document
25 that was provided to you now was ever -- was an interim version

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1 or a final version that was used?

2 A. I don't think there was ever a final version of it. As
3 things changed, the list changed. So any duties that changed,
4 this had to change. So it was always a work in progress.

5 Q. Okay.

6 MR. PILCHAK: I would object then, your Honor,
7 because it was always changing.

8 THE COURT: Just the basis of your objection?

9 MR. PILCHAK: Lack of foundation.

10 THE COURT: Okay. That's overruled. And it will be
11 received.

12 (Plaintiff's Exhibit No. P-1

13 Admitted Into Evidence)

14 MR. FARRAR: Thank you, your Honor. May I approach
15 the witness?

16 THE COURT: Yes.

17 CROSS-EXAMINATION (CONTINUED)

18 BY MR. FARRAR:

19 Q. Ms. Hahn, I'm showing you page 1 of Plaintiff's 1. And I
20 believe it was your testimony just a few moments ago this is
21 the who does what list from RE/MAX Platinum?

22 A. Yes.

23 Q. And this is obvious, but obviously that's RE/MAX
24 Platinum's letterhead there?

25 A. Um-hum.

1 Q. And I'm drawing your attention to this word management.

2 This is a list of the managers at RE/MAX Platinum, correct?

3 A. Yeah.

4 Q. And if I turn to the second page -- and I apologize. This

5 is a poor copy of them. But we can agree that these are

6 photos, these black boxes would have been, and a clear copy

7 would have been people's photographs.

8 A. Yes.

9 Q. Sorry. I'm just zooming in so it's clear. And we can
10 agree that this is a list of the staff, right?

11 A. A really old list of staff, yes.

12 Q. Well --

13 THE COURT: When you say the old list of staff, you
14 mean they're not the staff today?

15 THE WITNESS: They're definitely not the staff today.

16 THE COURT: You're listed there and you live in New
17 Mexico now.

18 THE WITNESS: Yes. It's definitely not the staff
19 today.

20 BY MR. FARRAR:

21 Q. And this may be helpful if I show you the date on the
22 bottom and if we can kind of zoom in there. We can agree that
23 as of July 2012 this was an accurate list?

24 A. That's the date on there.

25 Q. Hi, Kathy. There we go. And that's Ms. Duffie's name

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1 here under the staff column; is that right?

2 A. That is her name.

3 Q. Thank you.

4 MR. FARRAR: Excuse me one moment.

5 BY MR. FARRAR:

6 Q. Ms. Hahn, you testified earlier that Ms. Duffie would
7 assign you work; is that right?

8 A. Um-hum. Yes.

9 Q. But we can agree that there were times when you gave Ms.
10 Duffie direction, right?

11 A. Because we worked together.

12 Q. Right. You worked together, right?

13 A. We were in the same department.

14 Q. And there were times when you would ask Ms. Duffie to do
15 things, tell her to do this, tell her to do that. I mean, over
16 the course of the time you were there, we can agree on that,
17 right?

18 A. Um-hum.

19 Q. And we can also agree at times you and Ms. Duffie shared
20 work, right?

21 A. Um-hum.

22 Q. Now, let me ask you this, you -- when you were in Central,
23 you took a lot of time off to go hot air ballooning, right?

24 A. Um-hum.

25 Q. Sometimes it would be as many as 40 or 50 days off in a

1 year, right?

2 A. I don't know how many days.

3 Q. Well, can we agree it was in that ballpark?

4 A. It's possible.

5 Q. Okay. And when you took off this time, Ms. Duffie would
6 get stuck sort of picking up some of the slack. Would you
7 agree on that?

8 A. I guess if I wasn't there then someone would have to pick
9 up the slack.

10 Q. And Ms. Duffie was the one who would cover for you when
11 you were out of the office doing your work, right?

12 A. Sure.

13 Q. And in fact, when you were actually going to be out of the
14 office, you would tell people they can either contact Sherry or
15 Linn Felker in your absence, right?

16 A. Those were the people in Central.

17 Q. Okay. And that's because you, Sherry, and Linn, were all
18 working as a team, right?

19 A. In the same department, yeah.

20 Q. And when you took the time off, Mr. DeKroub was the one
21 that actually approved your time off, right?

22 A. I don't know that I ever specifically asked Joe for time
23 off.

24 Q. Let me ask you this, Ms. Hahn. Now, you have known Sherry
25 , Ms. Duffie, for a long time, right?

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1 A. Um-hum.

2 Q. Even before the merger, right?

3 A. Yes.

4 Q. And is it fair to say that you and Ms. Duffie don't
5 exactly get along?

6 A. I guess.

7 Q. And you've had arguments with Ms. Duffie before?

8 A. Everyone has arguments. But yeah.

9 Q. Now, are you familiar with someone by the name of Janice
10 Lamb?

11 A. Yes.

12 Q. And you know that Janice Lamb and Ms. Duffie used to share
13 office space, right?

14 A. Um-hum.

15 Q. And at the time you and Ms. Lamb would also have
16 conversation -- let me ask you this way, Ms. Lamb was a friend
17 at one point?

18 A. She was a co-worker.

19 Q. And you and her would have conversations near Sherry's
20 desk?

21 A. I guess if we had to talk.

22 Q. And Sherry complained that your conversations were
23 distracting people in the office and you took offense at that,
24 right?

25 A. I don't remember.

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1 Q. And you took offense when Sherry complained that your time
2 off was putting a strain on Central, right?

3 A. I don't remember.

4 MR. FARRAR: I have no further questions, your Honor.

5 THE COURT: Okay. Thank you.

6 MR. PILCHAK: I have a couple.

7 THE COURT: Okay.

8 REDIRECT EXAMINATION

9 BY MR. PILCHAK:

10 Q. With regard to the who does what list, I believe you
11 indicated that it was -- that there had been a number of
12 different versions on that, correct?

13 A. Yes.

14 Q. And do you recall whether Ms. Duffie ever appeared on the
15 management page prior to that?

16 A. I believe --

17 MR. FARRAR: Objection. Leading.

18 THE COURT: Prior to what?

19 MR. PILCHAK: Prior to the date of Exhibit 1.

20 THE COURT: Overruled.

21 THE WITNESS: I believe so.

22 MR. PILCHAK: Okay.

23 BY MR. PILCHAK:

24 Q. This is not marked as an Exhibit. But do you remember the
25 date?

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1 A. I don't.

2 Q. But you recall Ms. Duffie being on the management page
3 even before that Exhibit, correct?

4 A. It's possible.

5 Q. Would looking at such a document refresh your
6 recollection?

7 A. Yeah.

8 Q. Showing you a document. Consisted of multi pages. It was
9 printed out over the weekend. The date in the lower right-hand
10 corner are not accurate. But the other portions are. Review
11 that and see if that refreshes your recollection.

12 A. Yes.

13 Q. And looking through the first pages --

14 MR. FARRAR: I'm going to object. I think we need a
15 sidebar regarding this document.

16 THE COURT: Okay. What is just the basis of your
17 objection, just the rule?

18 MR. FARRAR: Never been produced before.

19 THE COURT: Oh, it's just -- it's not an exhibit.
20 It's a refresh the recollection. So I think we can proceed
21 without --

22 MR. FARRAR: But I would just note my objection if
23 she's going to be reading from anything that's not in
24 evidence.

25 THE COURT: Okay. Well, let's see if she can read

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1 quietly to herself and let's see if that assists her memory.

2 BY MR. PILCHAK:

3 Q. Have you reviewed the document?

4 A. Yes.

5 Q. In what year was it that Ms. Duffie appeared on the
6 management page?

7 A. It was --

8 Q. You can flip forward, if you like. Forward.

9 A. 2011.

10 Q. And in fact, what position was Ms. Duffie in when she was
11 listed on the management page?

12 MR. FARRAR: Objection.

13 THE COURT: Well, now from her memory. She can put
14 the document down and see if she can remember. And then if
15 you refresh your memory, you'll refresh your memory.

16 BY MR. PILCHAK:

17 Q. Do you remember what position she was in when she was
18 listed on the management page?

19 A. Closing coordinator.

20 Q. And that was where?

21 A. Ann Arbor.

22 Q. And you worked under Ms. Duffie's supervision?

23 MR. FARRAR: Objection. Asked and answered.

24 THE COURT: Sustained.

25 BY MR. PILCHAK:

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1 Q. Did you consult with Ms. Duffie -- strike that. I have no
2 further questions.

3 MR. FARRAR: Yes, your Honor.

4 THE COURT: Mr. Farrar?

5 MR. FARRAR: Thank you.

6 RECROSS-EXAMINATION

7 BY MR. FARRAR:

8 Q. Ms. Hahn, Mr. Pilchak just showed you a document. And do
9 you still have it in front of you?

10 A. No.

11 Q. Do you -- by the way, do you know when that document that
12 he just showed you was prepared?

13 A. There was an e-mail attached to it from 2011.

14 Q. But aside from the e-mail, do you have any personal
15 knowledge of when it was prepared?

16 A. I don't know exactly when it was prepared.

17 THE COURT: Did you prepare it?

18 THE WITNESS: Yes.

19 MR. FARRAR: May I see the exhibit again?

20 THE WITNESS: I believe I prepared it. I mean --

21 MR. FARRAR: I have something written on mine. I'm
22 happy to show it to the witness, but it might be easier if you
23 have -- your Honor, may I approach the witness?

24 THE COURT: Certainly.

25 BY MR. FARRAR:

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1 Q. I'm turning your attention to the third page of this
2 document. Do you see a date written in the bottom right-hand
3 corner of that page?

4 A. On the third page?

5 Q. Yes.

6 A. January 23rd, 2016.

7 Q. And can we agree that would be this past Saturday?

8 A. I'm assuming that's when it was printed.

9 Q. But you have no idea if that's when it was prepared or
10 not, right?

11 A. I don't know when it was prepared. I mean, I know it was
12 prepared while --

13 Q. That's all. No further questions.

14 THE COURT: Okay. Mr. Pilchak?

15 REDIRECT EXAMINATION

16 BY MR. PILCHAK:

17 Q. Ms. Hahn, is there any question in your mind that Ms.
18 Duffie appeared on the management page in 2011?

19 MR. FARRAR: Objection. Beyond the scope.

20 THE COURT: Overruled.

21 BY MR. PILCHAK:

22 Q. Is there any question that she appeared on the management
23 page before 2011?

24 A. No.

25 MR. PILCHAK: Nothing further.

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1 MR. FARRAR: Your Honor, one final question.

2 THE COURT: Okay.

3 RECROSS-EXAMINATION

4 BY MR. FARRAR:

5 Q. Ms. Hahn, I'm showing you what's in evidence as
6 Plaintiff's Exhibit 1. You would agree that as of -- let me
7 zoom in here. As of July 18th, 2012, Ms. Duffie's name did not
8 appear anywhere on the management portion of this?

9 A. I would agree with that.

10 Q. And that on that same -- as of that same date, July 2012,
11 Ms. Duffie was very clearly listed as staff. Can we agree on
12 that?

13 A. I agree she's on the staff page.

14 MR. FARRAR: No further questions.

15 THE COURT: Okay. Well, thank you, so much, Ms. Hahn
16 for being here. I hope you have a safe trip home if you're
17 headed back to new Mexico. You are released from this case
18 and you may step down.

19 THE WITNESS: Thank you.

20 THE COURT: Mr. Pilchak, do you have any other
21 witnesses you would like to call?

22 MR. PILCHAK: Yes.

23 THE COURT: And who would your next witness be?

24 MR. PILCHAK: The next witness will be Linn Felker.

25 THE COURT: Okay.

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1 Thereupon,

2 **L I N N F E L K E R ,**

3 having been called as a witness and having been first duly
4 sworn testified as follows:

5 THE WITNESS: Yes, I do.

6 THE COURT: Fantastic. Have a seat right there in
7 the witness box.

8 THE WITNESS: I have to get my glasses. They're on
9 the bench.

10 THE COURT: Would you like some water?

11 THE WITNESS: I would.

12 THE COURT: Okay. We'll get that for you.

13 DIRECT EXAMINATION

14 BY MR. PILCHAK:

15 Q. Would you state your full name for the record and spell
16 your full name for the court reporter, please?

17 A. Linn, L-I-N-N. Elizabeth, E-L-I-Z-A-B-E-T-H. Felker, F
18 as in Frank-E-L-K-E-R.

19 Q. And how are you currently employed?

20 A. How am I currently employed? I work full time for RE/MAX
21 Platinum.

22 Q. Okay. And how long have you worked for RE/MAX Platinum?

23 A. Twenty-one years.

24 Q. And continuously or --

25 A. There was a period I think it was '07 that I went and

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1 worked for one of the real estate agents at RE/MAX. But
2 otherwise I've been there since '94.

3 Q. Okay. And then you recall there being a merger that the
4 company was involved in, correct?

5 A. Right.

6 Q. And before the merger -- well, where do you work right
7 now, what part of the company?

8 A. I work in the accounting department and payables.

9 Q. Is there a name for that at RE/MAX?

10 A. It's called Central office.

11 Q. Okay. And have you always worked in Central?

12 A. No.

13 Q. When did you first start working in Central?

14 A. '94 I went there as a receptionist part time. My children
15 were small. And I worked part time for a couple of years. And
16 then I start going in Central part time part of the day in the
17 front office part of the day in the back office. And I think
18 I've been full time since '98.

19 Q. Full time where?

20 A. In Central.

21 Q. I see. And before March of 2011, do you remember who you
22 reported to?

23 A. Kandis Thompson.

24 Q. And after March of 2011, who did you report to?

25 A. Sherry Duffie.

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1 Q. And what is it that you saw or observed that prompts you
2 to say that Sherry Duffie supervised you?

3 A. In my daily tasks, if I was doing -- I couldn't pay
4 anything. Like I would open mail, give it to Sherry. She
5 would give it back with approval. So anything I had to pay, I
6 had to have approval from Sherry.

7 Q. And anything else?

8 A. Yeah. I mean, I have lots of little tasks. But we
9 inter-worked everyday. We talked.

10 Q. Okay. In front of you there's a binder. Would you turn
11 to the tab at 61 -- I'm sorry. Yeah, 61. I'm sorry, 51. How
12 do you identify defendant's proposed Exhibit 51?

13 A. As an e-mail between me and Sherry.

14 Q. Yes. And what's the general subject matter?

15 A. To get a hold of Charter TV.

16 MR. PILCHAK: And move to admit proposed Exhibit 51.

17 THE COURT: Is there any objection?

18 MR. FARRAR: No objection.

19 THE COURT: Okay. Then Exhibit D-51 is received.

20 (Defense Exhibit No. D-51 Admitted
21 Into Evidence)

22 BY MR. PILCHAK:

23 Q. Ms. Felker -- may I display that, your Honor?

24 THE COURT: Yes.

25 BY MR. PILCHAK:

1 Q. The paragraph in the small type is telling saying Kenneth
2 Durrant wrote just got a phone call telling me we may be shut
3 off in Fenton for internet, correct?

4 A. Yes.

5 Q. And who is Charter then?

6 A. Who was Charter then?

7 Q. Who is Charter?

8 A. Oh. It's our cable internet.

9 Q. Okay. And then Ms. Duffie has indicated in this exhibit
10 please follow up with Charter. What would that require you to
11 do?

12 A. Well, I believe that was actually -- that was directed at
13 Ken. I was supposed to cut the check and Ken was going to get
14 a hold of Charter.

15 Q. Well, it says Linn, please follow up with Charter.

16 A. Yeah.

17 Q. Did that require communication on your part?

18 A. Probably. I know I had to pay the bill. I guess I called
19 it, too. I don't remember exactly.

20 Q. Would this be an example of the kinds of e-mails and
21 directions that you received from Ms. Duffie?

22 A. Yeah.

23 Q. Look at proposed Exhibit 52. Would you -- how would you
24 identify that document?

25 A. It's another e-mail between me and Sherry.

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1 Q. And what's the general subject matter?

2 A. It's about awardable commission to do with closing for the
3 real estate agent that she wanted -- we had to go make a
4 correction on the close file.

5 MR. PILCHAK: Move to admit proposed Exhibit 52.

6 THE COURT: Is there any objection?

7 MR. FARRAR: No, Your Honor.

8 THE COURT: Okay. D-52 is received.

9 (Defense Exhibit No. D-52 Admitted
10 Into Evidence)

11 MR. PILCHAK: Thank you. And may I display, your
12 Honor?

13 THE COURT: Yes.

14 BY MR. PILCHAK:

15 Q. And then the communication that occurred on July 8th, 2013
16 at 11:30, I'm showing awardable commission for Don Von's
17 buyer's agent Kathleen Conely, please find the transaction
18 correct for both Don and Kathleen.

19 What is the issue with having awardable commissions
20 for Don Von's buyer's agent in this e-mail?

21 A. Buyer's agent can't have any awardable commission because
22 they are not -- they're classified different that they don't
23 get awardable commission.

24 Q. Okay.

25 A. So I just had to zero out for awardable commission.

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1 Q. Okay. And given what you know about how Central operates
2 or how Ms. Duffie conducted her affairs, do you know how it is
3 that something like this would come to her attention?

4 A. Because she looked at reports every month, you know,
5 looking for those types of things to be corrected.

6 Q. Okay. And would she correct your work from time to time?

7 A. Yes.

8 Q. Take a look at proposed -- strike that. You said you had
9 -- you were required to have approval to pay anything?

10 A. Yes.

11 Q. Who was responsible for payables?

12 A. Me and Sherry.

13 Q. Turning your attention to proposed Exhibit 56. How would
14 you identify that document?

15 A. It's another e-mail between me and Sherry.

16 Q. And what's the general subject matter with regard to this?

17 A. It was a problem in the Fenton office.

18 Q. Okay.

19 MR. PILCHAK: Move to admit proposed Exhibit 56.

20 MR. FARRAR: No objection.

21 THE COURT: Okay. Then D-56 is received.

22 (Defense Exhibit No. D-56 Admitted
23 Into Evidence)

24 MR. PILCHAK: May I display, your Honor?

25 THE COURT: Yes.

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1 BY MR. PILCHAK:

2 Q. Ms. Felker, how did Ms. Duffie sign off on her e-mail in
3 this instance?

4 A. Administrative manager.

5 Q. And was that typical?

6 A. Yes.

7 Q. And with respect to the statement that says at the bottom
8 please call Vickie in Fenton regarding Evon Perry's check. Do
9 you remember or do you recall what this incident was about?

10 A. No, not exactly.

11 Q. When you received an e-mail like this, would you respond
12 to it?

13 A. Yes.

14 Q. Okay. And in this case the response involves what?

15 A. Well, I called there and helped with the problem.

16 Q. Okay. How frequently did you get that kind of direction
17 from Ms. Duffie?

18 A. Could be daily or every other day. We e-mail each other a
19 lot back and forth.

20 Q. Then turn to proposed Exhibit 59. How would you identify
21 that document?

22 A. An e-mail between me and Sherry.

23 Q. And what's the general subject matter?

24 A. It's about an agent that was terminated and I was going to
25 send her the documentation from the State of Michigan.

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1 Q. And do you know if there are any legal requirements with
2 regard to displaying offices or licenses in the office?

3 A. We have to have them available for anybody. We have them
4 in a book up in the front office.

5 Q. Okay.

6 MR. PILCHAK: And then move to admit proposed Exhibit
7 59.

8 THE COURT: Is there any objection?

9 MR. FARRAR: Your Honor, we would object on the
10 grounds it's repetitive. But other than that, no objection.

11 THE COURT: Okay. Well, it will be received.

12 (Defense Exhibit No. D-59 Admitted
13 Into Evidence)

14 BY MR. PILCHAK:

15 Q. And Ms. Felker, the licenses are out in the lobby,
16 correct, on the wall?

17 A. No. They're in a book.

18 Q. Oh, they're in a book. I see. And was there any
19 particular reason that Ms. Duffie couldn't have just walked out
20 there herself and retrieved it from the book?

21 MR. FARRAR: Objection. Calls for speculation.

22 THE COURT: Sustained.

23 BY MR. PILCHAK:

24 Q. Are you familiar with the term hit by a bus manual?

25 A. Yes.

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1 Q. And what would you describe that as?

2 A. That was a book that she referred to that had codes for
3 everything and procedure manuals in it and had, you know,
4 directions in case something would ever happen to somebody.

5 Q. Did you ever prepare one?

6 A. I prepared a procedure manual for my daily task of
7 whatever position I was in at the time.

8 Q. And what caused you to prepare that document?

9 A. Because we were all asked to do that.

10 Q. And if you turn to Exhibit 40. Does this reference that
11 manual?

12 A. Yes.

13 Q. And this references a staff meeting, correct?

14 A. Yes.

15 Q. Did it occur from time to time that Ms. Duffie would call
16 staff meetings?

17 A. Yes.

18 Q. Are you familiar with a system where employees could work
19 more in one week or less in one week and then take time off the
20 next week or work more in the next week?

21 A. Yes.

22 Q. Okay. And did you have any particular feelings about
23 that, good, bad or indifferent?

24 MR. FARRAR: Objection. Relevance.

25 THE COURT: It's not relevant. So sustained.

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1 BY MR. PILCHAK:

2 Q. Do you have a sense of how many employees utilized that
3 system?

4 MR. FARRAR: Objection. Relevance.

5 THE COURT: Overruled.

6 THE WITNESS: Some of us back in Central would do
7 that. We would bank our hours.

8 BY MR. PILCHAK:

9 Q. And was it voluntarily or involuntarily?

10 A. It was voluntary.

11 THE COURT: It was voluntary in the sense that you
12 could be paid overtime if you didn't bank hours?

13 THE WITNESS: Well, like sometimes I would be like
14 over four hours. And then my mother, who's elderly, I would
15 have to take her to the hospital and I could then use my
16 hours. I never -- I only used a few little cushion there for
17 doctor appointments for my mom basically.

18 THE COURT: So if you worked 44 hours in a week, you
19 might use those four hours to visit with your mother?

20 THE WITNESS: Right.

21 THE COURT: But if you didn't use those hours, would
22 you be paid overtime?

23 THE WITNESS: No. But I never allowed them to get
24 like more than four.

25 THE COURT: I see. Okay.

1 BY MR. PILCHAK:

2 Q. Was it generally your choice whether you would work more
3 than 40 hours?

4 A. Yeah.

5 MR. PILCHAK: I have no further questions.

6 CROSS-EXAMINATION

7 BY MR. FARRAR:

8 Q. Good afternoon, Ms. Felker.

9 A. Hi.

10 Q. You still work for the defendant, RE/MAX Platinum?

11 A. I do.

12 Q. Mr. DeKroub, Mr. Joe DeKroub, is still your current
13 employer?

14 A. Yes, sir.

15 Q. And you and Mr. DeKroub are friends, right?

16 A. I guess so. I don't hang out with him.

17 Q. I mean, you see him socially. You see him at work, right?

18 A. I don't see him socially except at Christmas parties.

19 Q. By the way, were you subpoenaed to testify here today?

20 A. No, I was not.

21 Q. So you are here voluntarily?

22 A. Yes.

23 Q. And in addition to Mr. DeKroub, you're also friends with
24 Joe DeKroub's wife, right?

25 A. Not at all.

1 Q. Not at all? Well, you're friends with her on Facebook,
2 right?

3 A. Yes. But I don't hang out with her or anything.

4 Q. Would you consider yourself friends with Joe DeKroub's
5 son?

6 A. No.

7 Q. Okay. Now, you and I have never spoken before today,
8 right? But you've spoken to the defense attorneys, right?

9 A. Yes.

10 Q. In fact, you've spoken to them on a few occasions?

11 A. Yes.

12 Q. And you've talked to them specifically about your
13 testimony today?

14 A. I guess.

15 Q. I'm sorry. What was that?

16 A. Yes.

17 THE COURT: Can you speak up just a little louder so
18 that we can all hear?

19 THE WITNESS: Oh. Sorry.

20 BY MR. FARRAR:

21 Q. Now, you told this jury that Ms. Duffie would, on
22 occasion, assign you work; is that right?

23 A. Everyday.

24 Q. But you would agree that you and Ms. Duffie also shared
25 work, right?

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1 A. Yes.

2 Q. And sometimes Ms. Duffie would ask -- or strike that.
3 Sometimes you would ask Ms. Duffie for help, right?

4 A. Well, of course.

5 Q. And that's because you were working together with her as
6 part of a team --

7 A. I was her admin. I worked under her. I wasn't her equal.

8 Q. So that's your testimony?

9 A. I worked for Sherry.

10 Q. Well, let me ask you this way, Ms. Felker. You're here
11 testifying on behalf of your employer. But in the past you've
12 told Ms. Duffie that you thought the defendant RE/MAX Platinum
13 was being unfair to her. Do you remember that?

14 A. No.

15 Q. You thought they were being unfair to her for not paying
16 her overtime, right?

17 A. I don't recall that.

18 Q. Well, maybe you'll recall this. You and Ms. Duffie, while
19 you were working together, you exchanged text messages, right?

20 A. I guess.

21 Q. And on one occasion in March of 2014, you sent her a text
22 message saying, quote, they are not being fair to you, right?

23 A. I guess I did.

24 Q. So even though you're here today on behalf of the
25 corporation, you would agree that the corporation, the

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1 defendant, was being unfair to Ms. Duffie, right?

2 A. Well, I was probably being sympathetic with her.

3 Q. But you used the word, they are being unfair to you,
4 right?

5 A. I did.

6 MR. PILCHAK: May I object, your Honor? This is
7 touching on a limine issue.

8 THE COURT: This is also hearsay. So sustained.

9 MR. FARRAR: I was just asking the witness if she
10 said that. That's all.

11 THE COURT: Yeah. But what she said out of court is
12 still -- even though it's her, it wasn't under oath.

13 MR. PILCHAK: And I'm moving to strike all of that
14 testimony. Because I don't believe any of it -- could we have
15 a sidebar.

16 THE COURT: Yes. Let's have a sidebar.

17 (Bench Conference)

18 MR. PILCHAK: I don't believe I have a copy of that
19 text. But can I see it?

20 MR. FARRAR: Well, I'm not using it to refresh her
21 recollection.

22 MR. PILCHAK: Well, but it relates to an evidentiary
23 issue.

24 THE COURT: Yeah. We need to know --

25 MR. PILCHAK: What's the date of it? Well, it

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1 doesn't say the date. What date is it?

2 THE COURT: Which in limine issue are you referring
3 to?

4 MR. PILCHAK: This is referring to her departure.

5 THE COURT: Because I did not know --

6 MR. PILCHAK: Sure.

7 THE COURT: Can I see it? I don't know how it refers
8 to her departure.

9 MR. PILCHAK: I can tell it's not referring to her
10 wage payments. It's referring to the circumstances --

11 MR. FARRAR: You're testifying to what it refers to.

12 MR. PILCHAK: I'm not testifying in front of the
13 jury. I'm trying to show the judge that you're bringing in --

14 THE COURT: I don't -- you asked this witness if she
15 said she supports Duffie in her overtime.

16 MR. FARRAR: No, I didn't ask that question.

17 THE COURT: Okay. What did you ask? One at a time.
18 Stop.

19 MR. FARRAR: In the past she has told Ms. Duffie she
20 thought they, as in the corporation, was being unfair to her.

21 THE COURT: Right.

22 MR. FARRAR: About how they treated her and they're
23 not paying her her wages.

24 THE COURT: Okay. But this doesn't relate to wages,
25 does it?

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1 MR. PILCHAK: This is after.

2 MR. FARRAR: It's not -- we just have this little
3 piece. We don't know. But I think it's a fair question to
4 her, what was she talking about there. And that was the
5 extent of the questioning.

6 MR. PILCHAK: But he's tiptoeing into it because
7 that's what she's talking about. The date of that is after
8 March 17th -- on or after March 17th she's saying she's unfair
9 --

10 MR. FARRAR: I don't believe it was after March 17th.

11 MR. PILCHAK: Well, let's see it.

12 THE COURT: Let's see what she knows about whether
13 she sent the text, whether -- when it was. And if she can't
14 place it before the termination then she can't say I was
15 referring to overtime. Because the other fairness issues
16 aren't in this case.

17 MR. FARRAR: I understand.

18 MR. PILCHAK: How are we going to get that without
19 tainting the jury on the in limine issue?

20 THE COURT: He's not going to ask any question -- you
21 have to stop when I'm talking.

22 MR. FARRAR: Sorry.

23 THE COURT: Mr. Farrar is ordered not to ask
24 questions about general fairness and general treatment at the
25 job. Just about whether she sent a text indicating she

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1 thought she shouldn't be paid overtime or it's unfair she's
2 not paid overtime. If she doesn't say she did, just stop.

3 MR. FARRAR: Just to be clear, I'll ask her you sent
4 this text saying the corporation was being unfair for not
5 paying her overtime; is that right? Is that the question?

6 THE COURT: I don't know when the text -- let's leave
7 the text out and just ask if she ever said -- go back a little
8 bit. Ask, did you ever tell Ms. Duffie that the company was
9 being unfair in not paying you overtime.

10 MR. FARRAR: Okay.

11 THE COURT: Okay.

12 MR. PILCHAK: Was that disclosed to us? Because I've
13 never seen that document. But there's Rule 26 disclosures.

14 THE COURT: Okay. Let's conclude our sidebar. Thank
15 you.

16 (Open Court)

17 THE COURT: We're back now and I think Mr. Farrar has
18 another question.

19 MR. FARRAR: Thank you, your Honor.

20 BY MR. FARRAR:

21 Q. Ms. Felker, did you ever tell Ms. Duffie that you thought
22 the defendant was being unfair to her for not paying her
23 overtime?

24 A. I guess I did in that text. I didn't recall.

25 Q. Now, and you would agree, Ms. Felker, that Ms. Duffie was

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1 working a lot. Would you agree on that?

2 A. I would agree.

3 Q. In fact, I believe even the e-mail or the e-mail that was
4 just shown to you a few minutes ago by Mr. Pilchak referenced
5 her working on Saturday. Did you see that?

6 A. Yes.

7 Q. And you'd agree that Ms. Duffie, on occasion, worked long
8 hours and weekends and late nights, right?

9 A. I agree.

10 MR. FARRAR: Nothing further.

11 THE COURT: Okay.

12 MR. PILCHAK: Can I have that text, please?

13 REDIRECT EXAMINATION

14 BY MR. PILCHAK:

15 Q. Ms. Felker, nothing about this text you sent references
16 anything about overtime, right?

17 A. No.

18 MR. FARRAR: Objection. Leading.

19 THE COURT: Sustained.

20 BY MR. PILCHAK:

21 Q. Do you know whether that text had anything to do with
22 overtime or not?

23 A. I don't. Because I don't remember it. I don't remember
24 that conversation at all honestly. So I don't know and I can't
25 -- I've only heard what he -- I don't see the whole context of

1 it.

2 Q. And with regard to the text that prompted you to say
3 you're not being fair, looking at the bottom of the text
4 specifically what was the subject matter?

5 A. Stress. Stressful place to work.

6 THE COURT: Can you speak a little louder?

7 THE WITNESS: Oh. A stressful place to work.

8 THE COURT: Okay.

9 BY MR. PILCHAK:

10 Q. And as you sit here right now, do you know one way or the
11 other if your feelings about on this particular day on this
12 particular text had anything to do with the way they were
13 paying Ms. Duffie as opposed to it being a stressful place to
14 work?

15 THE COURT: Just a minute. We have an objection?

16 MR. FARRAR: Object to the form and I believe asked
17 and answered.

18 MR. PILCHAK: Well --

19 THE COURT: Can you break the question down? I think
20 it has been asked and answered. So if you're just asking
21 whether it relates to the overtime, we already have an answer.

22 BY MR. PILCHAK:

23 Q. Now that you've seen the full text, do you have a greater
24 insight as to what you felt was unfair?

25 A. Her workload. I think that was what the subject matter

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1 was. I had no idea how she was paid or if she was paid
2 overtime. We've never ever conversed about her pay.

3 Q. Okay.

4 MR. PILCHAK: I have no further questions.

5 THE COURT: Okay.

6 MR. FARRAR: Nothing further from us, your Honor.

7 THE COURT: Okay. Fantastic. All right. Well, you
8 are released to step down. And thank you, so much, for being
9 here. Mr. Pilchak, do you have any more witnesses?

10 MR. PILCHAK: I'm going to call Kandis Thompson.

11 THE COURT: Okay.

12 MR. PILCHAK: Should we just charge right ahead with
13 her or --

14 THE COURT: Would the jury like a break? Looks like
15 we could use a break. So let's do that. Please rise for the
16 jury.

17 (Jury Out)

18 THE COURT: On the issue of admitting evidence
19 without witnesses, apparently that can be done or is done
20 where things are self-authenticating or are authentic pursuant
21 to a particular rule. 9028 specifically requires -- this is
22 referring back to plaintiff's proposal to admit the answer to
23 the complaint into evidence. 9028 I am going to try to locate
24 again. Specifically requires -- hold on. I'm almost there.

25 9028 requires that a document -- says that a document

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1 accompanied by a certificate of acknowledgment that is
2 lawfully executed by a notary public or another officer who is
3 authorized to take acknowledgements.

4 Now, admittedly Mr. Pilchak and Mr. Russell are
5 officers of the court and they sign that they're submitting
6 it. So I think it's close. But I think the more important
7 issue is 403 and the degree of confusion that can be created
8 by this document.

9 It includes all sorts of legal language we have no
10 context for in terms of testimony about what any of the words
11 mean. And I think at a risk of not over or underestimating
12 the jury, it's -- I think it would create confusion to have a
13 document of that nature. And if anything, I think it creates
14 confusion in favor of the defendants because they're denying
15 all of your allegations.

16 But I don't personally understand having read it
17 twice or three times now what it could possibly be used for in
18 this case that would not be confusing. So on that basis it
19 will be excluded.

20 However, I would just comfort the plaintiff and
21 plaintiff's counsel in that in all of those issues that are
22 affirmative defenses or in the answer, Mr. Pilchak and Mr.
23 Dare are bringing out through their evidence what their
24 position is in them. So you can certainly argue it.

25 You heard -- you can say in closing. You heard Mr.

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1 Pilchak blame Ms. Duffie for being the payroll administrator
2 or something like that. I think that's the closest I could
3 get to what you might be possibly getting at.

4 MR. FARRAR: Okay.

5 THE COURT: So you'll just do that in your closing.

6 MR. FARRAR: Thank you, your Honor.

7 THE COURT: Okay. So let's just take a short like
8 five-minute break and we'll be back. Is there anything else
9 at this point?

10 MR. FARRAR: No.

11 THE COURT: Okay.

12 (Brief Recess)

13 THE COURT: Okay. Anything before we bring the jury
14 in?

15 MR. FARRAR: No.

16 THE COURT: And your next witness is Kandis Thompson?

17 MR. PILCHAK: Kandis Thompson.

18 THE COURT: Okay. All right. Then we'll get the
19 jury. And we'll conclude at 4:00 so we can get to work on the
20 jury instructions.

21 THE CASE MANAGER: All rise for the jury.

22 (Jury In)

23 THE COURT: Okay. Please be seated. And Ms.
24 Thompson, would you like to step forward?

25 MR. PILCHAK: And for the record, defense will call

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1 our next witness, Kandis Thompson.

2 THE COURT: Okay.

3 Thereupon,

4 **K A N D I S T H O M P S O N ,**

5 having been called as a witness and having been first duly
6 sworn testified as follows:

7 THE COURT: Have a seat in the jury box or the
8 witness box. The jury box is full.

9 DIRECT EXAMINATION

10 BY MR. PILCHAK:

11 Q. Would you state your full name for the record?

12 A. Kandis Kay Thompson.

13 Q. And would you spell it for the court reporter?

14 A. K-A-N-D-I-S, K-A-Y, T-H-O-M-P-S-O-N.

15 Q. Are you married, Ms. Thompson?

16 A. Yes.

17 Q. And do you have children?

18 A. Yes.

19 Q. And what is your educational level?

20 A. I have a bachelor's degree in accounting and information
21 systems.

22 Q. Say that again. In what?

23 A. Accounting information systems.

24 Q. So the bachelor's degree is in accounting information
25 systems?

1 A. Yes.

2 Q. Okay. And what year did you get that degree?

3 A. I believe I completed it in 1992.

4 Q. And how old were you in 1992?

5 A. Twenty-eight.

6 Q. Were you employed while you obtained your degree?

7 A. Yes.

8 Q. And how were you employed?

9 A. I worked for Michigan Group.

10 Q. Okay. And with regard to your degree, did any of the
11 coursework that you took for your accounting information
12 systems degree involve any instruction on payroll practices?

13 A. No.

14 Q. When did you first become employed by The Michigan Group?

15 A. I was 25. It was in 1990.

16 Q. Okay. Who were the owners of The Michigan Group in 1990?

17 A. Joe DeKroub and Fred Madley.

18 Q. How do you spell Madley?

19 A. M-A-D-L-E-Y.

20 Q. And what were your initial responsibilities there?

21 A. I worked in the accounting department.

22 Q. Okay. And did you work under supervision?

23 A. Alongside Fred Madley's stepdaughter, Carol Madley.

24 Q. And what were your initial duties, say right from the very
25 beginning?

1 A. Accounts payable, accounts receivable.

2 Q. And then what did Carol Madley do?

3 A. She did all of the accounting functions. And I was
4 brought in to assist her with all of them. So as time went on,
5 my responsibilities increased.

6 Q. Okay. Do you remember what your initial compensation was?

7 A. 25,000.

8 Q. And over the years -- now, did you work continuously for
9 The Michigan Group from 1990 through say March of 2011?

10 A. I did except for one year that I took off when our second
11 child was born.

12 Q. Okay.

13 A. I stayed home that year.

14 Q. And over the period of time, did your responsibilities
15 increase?

16 A. Yes.

17 Q. And in what way did your responsibilities increase?

18 A. It encompassed all accounting aspects of maintaining the
19 checking account, general checking account, escrow checking
20 account. Complying with state law, real estate law as far as
21 how the escrow account had to be monitored, the records that
22 had to be kept for it. In the event of an audit, which I would
23 be the person that would have to provide the documentation if
24 the state came in to audit the escrow account.

25 Q. Okay.

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1 A. Bank reconciliation, payroll, reports for Joe.

2 Q. Okay. And that \$25,000 compensation, did that ever
3 change?

4 A. Yes.

5 Q. How did it change specifically? How did you get
6 compensation increases?

7 A. I would go to Joe.

8 Q. Had you observed Joe's practice and habit in regard to pay
9 increases?

10 A. It was you had to ask.

11 Q. Are you familiar with the term Central?

12 A. Yes.

13 Q. And how would you describe Central?

14 A. That it's the accounting central function of the business.

15 Q. And did you have -- did the company give you a title?

16 A. No.

17 Q. And did you use a title?

18 A. Yes.

19 Q. And what title did you use?

20 A. Controller.

21 Q. And why did you use the term controller?

22 A. It summed up what I did. I controlled the functions --
23 bless you -- of the accounting department.

24 Q. Okay. And did you have people reporting to you prior to
25 March of 2011?

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1 A. Yes.

2 Q. And during the course of time that you were -- let me ask
3 you this. When did the company first start referring to
4 anything by the term Central?

5 A. I don't recall exactly. I can't recall.

6 Q. Okay.

7 A. Just kind of was there.

8 Q. And for whatever period of time that you were in charge of
9 Central as an entity, did there -- were there or were there not
10 hirings and firings?

11 A. There were.

12 Q. Okay. And how would those come about?

13 A. If it was someone under my supervision or -- it would be
14 based on my recommendations if it was something that I felt
15 necessary I would go to Joe and talk to him.

16 Q. Okay.

17 A. There were times that he would ask me, you know, what do
18 you think about this or that or like the receptionist.

19 Q. Okay. And what did you find resulted from your
20 recommendations?

21 A. I'm not sure I understand your question.

22 Q. You said you made recommendations. What was the result of
23 you making recommendations?

24 A. Joe would -- sometimes he would say, yes, I agree with
25 that. Go with that. Or if he had any input otherwise, he

1 would speak.

2 Q. Okay. What kind of tools are used in an accounting office
3 like Central?

4 A. Computer hardware, software.

5 Q. Okay. And what kind of computer software was Central
6 using up until March of 2011?

7 A. Software program called AccountMate.

8 Q. And anything else?

9 A. There's -- for the real estate aspect of things, there's a
10 Realty Management System we refer to often as RMS. The company
11 that makes it is called brokerWOLF.

12 Q. Okay. And --

13 A. I'm sorry. The company name was called Lone Wolf. The
14 product is now called brokerWOLF.

15 Q. I see. Okay. Let me shift gears a little bit and talk
16 about you mentioned the escrow account. Can you tell the jury
17 what are the implications of having an escrow account at least
18 with respect to the work in Central?

19 A. It was our function to make sure that we kept very
20 detailed records as to whose money was being held, when was it
21 received, the amount, of course, and also when -- for what
22 property it related to. And the trail of events with that
23 money to the point that it became a zero balance for that
24 transaction.

25 There's what's called trust transaction review sheets

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1 that would detail that history of transactions and you would
2 have to keep those. We have a file cabinet full of the
3 transactions that came to a zero balance and we have to keep
4 those on file for minimum of seven years.

5 And then anything that was currently outstanding had
6 to be in another file. So at any given time you could go
7 through that drawer and add up everything and it should equal
8 what's in the trust account.

9 Q. All right. And what role did the -- did you as the
10 controller of Central play in terms of all those requirements?

11 A. It was my responsibility to make sure that it was held in
12 compliance and that information on each of those trust
13 transaction reviews or what it needed to be so that if the
14 State of Michigan came in to review any files, all the records
15 were accurate.

16 We also needed to keep track of all of the check
17 stubs of monies written out of the escrow account and they
18 could take those and cross reference them with the trust
19 transaction reviews to see how the money was dispersed and to
20 who it went to.

21 Q. Okay. And in terms of day to day requirements, what did
22 that require of you in terms of your attention to those issues?

23 A. Daily I review the escrow cards -- the trust transaction
24 reviews before they get attached to the previous ones. So for
25 instance, if somebody had a thousand dollar earnest money

1 deposit and then they -- the deal fell, when they gave us the
2 deposit we would have one trust transaction review. And then
3 if the deal fell later on and the money had to be returned to
4 them, that creates a new trust transaction review that gets
5 stapled on top of the other one. And that's now a zero trust
6 transaction card.

7 Q. There's been some testimony with regard to Mr. Bill
8 Russell, who's seated right behind me here. And my question to
9 you is drawing your attention to the time period of 2007 to
10 December 31st of 2011, do you know whether or not he was
11 affiliated in any way with The Michigan Group or any of its
12 other related entities?

13 A. No, he was not.

14 Q. How long did you continue in the job of controller in
15 Central after being in the position? Did there come any point
16 in time when you left the position?

17 A. From when I first started?

18 Q. Yes. And besides the year you took off for your second
19 child?

20 A. Okay. I left in March of 2011.

21 Q. And what prompted you to leave the position in March of
22 2011?

23 A. I became a loan officer.

24 Q. And why did you become a loan officer?

25 A. I hoped to increase my income.

1 Q. Was there any reason why you needed to increase your
2 income?

3 A. Yes.

4 Q. And what was that?

5 A. My husband, at the time, was a builder. And with the
6 economic conditions what they were, the building company was
7 struggling. And the income that he had been able to draw from
8 that was no longer there. And we didn't have medical benefits.
9 We had to pay for those out of pocket. So it was becoming
10 harder and harder to meet bills.

11 Q. And in what way would becoming a loan officer resolve that
12 problem?

13 A. The pay structure of a loan officer is based on
14 commission. And I hoped to be able to do well at it and
15 hopefully make more than I had at RE/MAX.

16 Q. And in fact, did you take that position?

17 A. Yes, I did.

18 Q. And did you end up making more than you had made as
19 controller?

20 A. Yes, I did.

21 Q. Did you have discussions with anybody in preparation for
22 you to leave the controller position?

23 A. I did speak with Joe.

24 Q. Okay. And for what purpose?

25 A. To discuss my thought process and that I had hoped to be

1 able to do that. Because if I was going to do it, I wanted to
2 work for Michigan United Mortgage, which at the time was his
3 company.

4 Q. Okay. And did you have any discussions in any way
5 regarding Central and what would go on there if you left the
6 position?

7 A. Joe asked if I felt Sherry was able to take my position.

8 Q. And what did you tell him?

9 A. I told him that I felt she could. She had frequently on
10 multiple occasions mentioned to me that she had ran her
11 parent's business. So I felt if she had that history and that
12 she was pretty much my capacity at the RE/MAX prior to our
13 merger, then I felt she was -- would be able to handle the job.

14 Q. Okay. After you made those statements to Mr. DeKroub, did
15 the company engage in any search or to look for any other
16 candidates?

17 A. No.

18 MR. FARRAR: Objection. Form. If she knows.

19 THE COURT: If you know, yeah. Why don't you
20 rephrase your question.

21 BY MR. PILCHAK:

22 Q. Preparatory to you moving to Michigan United Mortgage, are
23 you aware of any search that the company made to look for any
24 candidate other than Ms. Duffie?

25 A. No.

1 Q. And so who then filled your position after you left as far
2 as you know?

3 A. Sherry Duffie.

4 Q. Will you open to tab 7? I'm showing you Ms. Duffie's
5 resumé. And with regard to the bullet points there, does --
6 did you perform the first duty in your role as controller?

7 A. Yes.

8 Q. And did you do it personally or did you delegate it?

9 A. Delegate. There were some times I would do it personally
10 if my assistant wasn't there.

11 Q. Okay. And who generally did you delegate it to?

12 A. At what time? Now?

13 Q. Just before you left, for example.

14 A. Erica Hahn and Linn Felker and Sherry Duffie.

15 Q. Okay. And the second bullet point that says payroll and
16 tax reporting for RE/MAX Platinum and Select Title, LaVita
17 Bistro Restaurant and Michigan United Mortgage, did you engage
18 in that duty as part of your employment?

19 A. Yes.

20 Q. And did you delegate payroll duties?

21 A. Payroll would be -- if I was there, I would do payroll.
22 If I wasn't there, Sherry could do it.

23 Q. Okay. Anybody else?

24 A. Pam Shearer knew how to do payroll as well.

25 Q. Did Erica or Linn Felker do payroll?

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1 A. No.

2 Q. Is there any particular reason why?

3 A. It wasn't necessary to cross-train that many people. If I
4 wasn't there, we had two people back up. So I didn't see the
5 need.

6 Q. Looking at the third bullet point, implementation of
7 procedures, let's say, to process real estate transactions and
8 assure all documentation to be complete and in compliance with
9 state real estate laws.

10 Did you have involvement in that duty when you were
11 the controller?

12 A. Yes.

13 Q. What kind of procedures were required to process real
14 estate transactions and assure documentation to be complete?

15 A. Trust transaction reviews. Bank -- the banking -- bank
16 reconciliations.

17 Q. Are there any -- is there any requirement as to what a
18 file must contain?

19 A. Yes. We have closing files. When a file has an offer on
20 it that's called a pending status. And there would be certain
21 documentation at that time that had to be in a transaction.
22 And then when a transaction closes, that would be the close
23 status. And there would be a checklist of things that needed
24 to be in the file such as the HUD statement, the warranty deed.

25 Q. And that was the job of the controller to assure that the

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1 files ultimately contained that?

2 A. Yes.

3 Q. And then we talked about the next bullet, maintaining
4 escrow account in compliance with state real estate laws. Do
5 you see that?

6 A. Yes.

7 Q. In looking through the remainder of the duties, with the
8 possible exception of the one that mentions liaison with RE/MAX
9 of Michigan Regional, did you attend to all of those duties in
10 your role as controller? And with the possible exception of
11 the last one.

12 MR. FARRAR: I would object to the question, to the
13 extent there is one.

14 THE COURT: Overruled. I think the question is
15 whether you did the list of duties there with the bullet
16 points except the ones --

17 THE WITNESS: I'm just having trouble reading them.

18 THE COURT: We're very close to four o'clock.

19 MR. PILCHAK: This will be the last question for
20 today.

21 THE COURT: Perfect. Good place to stop then.

22 MR. PILCHAK: Can we stop right there then?

23 THE COURT: Why don't we get this one done.

24 THE WITNESS: And the year end tax preparation for
25 accounting firm -- yes. Yes.

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1 BY MR. PILCHAK:

2 Q. And the two that you didn't do are what?

3 A. I was not the liaison with RE/MAX of Michigan to do the
4 monthly reporting. And then I didn't convert the entities to
5 QuickBooks in 2012.

6 THE COURT: Okay. Well, then, what we'll do is, Ms.
7 Thompson, I swore you in when you arrived here. And you can
8 step down. And you'll be under oath when you return to
9 testify tomorrow morning. And let me make sure that we're
10 starting at nine o'clock tomorrow. Yes. That's good with
11 everybody. Okay.

12 So we'll be back here at nine o'clock. Okay. So you
13 may step down. And then for our jury, it's the same thing I
14 keep telling you about please get some rest. Drive carefully.
15 And do not talk about the case among yourselves or with anyone
16 else. And should anyone approach you, be sure to let me know.
17 To talk about the case, that is. Okay. So please rise for
18 the jury.

19 (Jury Out)

20 THE COURT: Okay. Please be seated. Now, we need to
21 work on the jury instructions. And we can -- Jesse, did you
22 put a copy of the standard instructions? Okay. What I'd like
23 to do is maybe just go upstairs and work on them in chambers.
24 We'll be off the record. And if there are objections, we'll
25 get those put on the record in the morning. We're off on the

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1 record now.

2 (Proceedings Concluded)

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9 CERTIFICATE OF OFFICIAL COURT REPORTER

10 I, Jeseca C. Eddington, Federal Official Court
11 Reporter, in and for the United States District Court Eastern
12 District of Michigan, appointed pursuant to provisions of Title
13 28, United States Code, Section 753, do hereby certify the
14 foregoing 211 pages are a true and correct transcript of the
15 proceedings had in the matter of SHERRY L. DUFFIE versus THE
16 MICHIGAN GROUP, INCORPORATED - LIVINGSTON, doing business as
17 RE/MAX PLATINUM, Case No. 14-14148 held on February 25, 2016.

18
19 /s/ JESECA C. EDDINGTON
20 Jeseca C. Eddington, RMR, CRR, FCRR
Federal Official Court Reporter

4/29/2016
Date